

QUILAPAYUN

EL PUEBLO UNIDO

Spanish and English Texts



MFS 773

SIDE 1

EL PUEBLO UNIDO JAMÁS SERÁ VENCIDO

De pie, cantar
nos vamos a triunfar
avanzan ya
banderas de unidad
y tú vendrás
marchando junto a mí
y así verás
tu canto y tu bandera
florecer, la luz
de un rojo amanecer
anuncian ya
la vida que vendrá.

De pie, luchar
el pueblo va a triunfar
será mejor
la vida que vendrá
a conquistar
nuestra felicidad
y en un clamor
mil voces de combate
se alzarán, dirán,
canción de libertad
con decisión
la Patria vencerá.

Y ahora, el pueblo
que se alza en la lucha
con voz de gigante
gritando: ¡adelante!

La Patria está
forjando la unidad
de norte a sur
se movilizará
desde el salar
ardiente y mineral
al bosque austral
unidos en la lucha
y el trabajo irán,
la Patria cubrirán
su paso ya
anuncia el porvenir.

De pie cantar
el pueblo va a triunfar
millones ya
imponen la verdad
de acero son
ardiente batallón
sus manos van
llevando la justicia
y la razón, mujer
con fuego y con valor
ya estas aquí
junto al trabajador.

Y ahora, el pueblo
que se alza en la lucha
con voz de gigante
gritando: ¡adelante!

SIDE 1

A PEOPLE UNITED WILL NEVER BE DEFEATED

Stand up, sing
we are going to triumph.
Flags of unity are advancing now
and you will come
marching together with me.
In this way you'll see
your sinking and your flag blossom.
The light
of a red dawn
already announces
the life that will come.

Stand up, struggle,
the people will triumph.
It will be better
The life that will come
To win
our happiness.
And there will be a clamor
of a thousand embattled voices:
They will speak
a song of freedom.
With determination
the homeland will win.

And now the people
rising up in the struggle
with a great voice
shout "forward!"

The homeland forging unity
from north to south
will be mobilized
From the fiery salt mine
to the southern forests
united in struggle
and work they will go.
They will cover the country,
their step already
announces the future.

Stand up, sing
people will triumph
Millions now
impose the truth.
The fiery army
is as steel.
Its hands
carry justice and reason
Women with fire
and with courage
already you are here
close to the worker.

And now the people
rising up in the struggle
with a great voice
shout "forward!"

SOMBRERO DE AZUL

El pueblo salvadoreno tiene el cielo por sombrero.
Tan alta es su dignidad - en la busqueda de tiempo
En que floresqua la tierra por los que han ido cayendo.
En que venga alegría a lavar el sufrimiento.
En que venga alegría a lavar el sufrimiento.

Dale que la marcha es lenta pero sigue siendo marcha.
Dale que empujando el sol se acerca la madrugada.
Dale que la lucha tuya es pura como una muchacha.
Cuando se entrega el amor con el alma liberada.

(coro)

DALE SALVADORENO -- DALE
QUE NO HAY PAJARO PEQUENO -- DALE
QUE DESPUES DE ALZAR EL VUELO
SE DETENGA EN SU DOLAR.

repite coro.

Al verde que yo le canto es al color de tus maizales
No al verda a las boinas de matanzas tropicales.
Los que fueron al Vietnam a quemar los arosales.
Hoy andan por estas tierras como andar por sus corales.

Coro 2 veces.

Hermano salvadoreno viva tu sombrero azul.
Dale que tu limpia sangre germinara sobre el mar.
Y sera un enorme rosa de amor por la humanidad
Hermano salvadoreno viva tu sombrero azul.
Tendrán que llenar el mundo con masacre de sumpul.
Para quitar las ganas del amor que tienes tu.

coro 2 veces

DALE SALVADORENO -- DALE
DALE SALVADORENO -- DALE
DALE SALVADORENO -- DALE



Rights of Restaurant Workers

EMPLOYMENT LAW OFFICE of the Legal Aid Foundation of Los Angeles
and the LABOR DEFENSE NETWORK — Telephone: (213) 389-3581

WHAT IS THE MINIMUM WAGE I SHOULD BE GETTING?

You must be paid at least \$4.25 an hour, or \$34.00 for an 8 hour day before deductions. If you work 40 hours, you should be paid \$170.00 per week before deductions. THIS IS THE MINIMUM WAGE REQUIRED BY STATE AND FEDERAL LAW.

MY EMPLOYER TOLD ME HE COULD PAY ME LESS THAN THE MINIMUM WAGE BECAUSE I'M BEING TRAINED FOR THE JOB. IS THIS LEGAL?

Your employer can pay you less than the minimum wage only if you are being trained for a job in which you have no previous, similar or related experience. If you have worked as a waiter/waitress and are capable of performing the job, then you should not be considered a trainee or learner and your employer must pay you at least \$4.25 an hour.

If you have never worked as a waiter/waitress before, then your employer can pay you less than the minimum wage. But he must pay you at least \$3.61 an hour and he can only do that for the first 160 hours of your employment.

CAN MY EMPLOYER COUNT MY TIPS AS PART OF MY WAGES?

No! Your employer may not deduct the tips you receive from your wages. And your employer may not count your tips as part of the \$4.25 per hour he is required to pay you. Tips are considered extra earnings and belong to you-- not to your employer.

CAN MY EMPLOYER TAKE A PERCENTAGE OF MY TIPS?

No! Your tips are considered your property. Your employer may not tell you or your co-workers what to do with the tips. Only the waiters/waitresses may decide whether the tips should be shared or divided or kept by all of them individually.

WHAT CAN HAPPEN TO MY EMPLOYER IF HE TAKES TIPS WITHOUT MY PERMISSION?

Any employer who violates this law is guilty of a misdemeanor, punishable by a fine of not more than \$1,000 or by imprisonment for not more than 60 days, or both.

CAN MY EMPLOYER COUNT THE MEALS I EAT AS PART OF THE MINIMUM WAGE?

Maybe, but meals may not be credited against the minimum wage without a voluntary written agreement between you and your employer. Even then, the amount charged cannot be more than \$1.50 for breakfast, \$2.10 for lunch and \$2.80 for dinner. Each meal must be a wellbalanced serving of wholesome and nutritious foods. And, of course, no credit or deduction can be taken by the employer if you do not actually eat the meal.

DO I HAVE TO REPORT MY TIPS TO THE INTERNAL REVENUE SERVICE?

Yes. Tips are calculated as wages for income tax purposes and must be reported to the Internal Revenue Service.

MY EMPLOYER EXPECTS ME TO COME IN EARLY, CHANGE INTO MY UNIFORM AND BEGIN PREPARING MY WORK

STATION BEFORE I CLOCK IN. MY EMPLOYER ALSO EXPECTS ME TO HELP CLEAN UP AFTER I CLOCK OUT. SHOULDN'T I BE PAID FOR THAT TIME?

Yes, time spent preparing the restaurant for opening or closing should be considered as part of your hours worked, even if your employer doesn't require you to do this. Many restaurants, for example, will tell their employees that they "begin work" at 5 p.m. when the restaurant opens. But if 5 p.m. is when the customers expect to be seated and served, you may have to come in at 4:30 to prepare for the 5 p.m. opening. That time should be counted as part of the total hours you worked for that day. In many restaurants it is an unspoken understanding that you will "donate" this time. But by permitting you to work, your employer is required to pay you for that time.

WHAT IS A "SPLIT SHIFT"?

A split shift means a work schedule which is interrupted by nonpaid, nonworking periods established by the employer other than rest or meal periods. If you receive the minimum wage, you are entitled to an extra 1 hour's pay in addition to your regular wages for that workday. This is a "premium" you are entitled to because of the inconvenience the split shift causes. If you make more than the minimum wage, you might still be entitled to the split shift premium.

For example, if your employer requires you to work from 12 noon to 2 p.m. and then from 5 to 9 p.m., you are working a split shift. If you make the minimum wage of \$4.25 per hour, you are entitled to an extra hour of pay. In this example, the total hours worked is 6 hours, but because it is a split shift, you should receive 7 hours pay at the minimum wage.

WHAT IF I'M SENT HOME EARLY BECAUSE THERE'S NOT ENOUGH WORK?

If you report to work and are sent home because there is not enough to do, or if you are sent home after working less than half your usual hours, you are entitled to extra pay. You should be paid half of your regular pay for the day, within these limits: You must be paid for at least 2 hours of work and you can't be paid more than 4 hours of work.

If you report for the second part of a split shift and there is no work for you, you are entitled to 2 hours of pay.

WHEN SHOULD I GET PAID OVERTIME?

You must be paid overtime whenever you work more than 8 hours a day or more than 40 hours a week. If you are making the minimum wage, you should be paid at least \$6.38 an hour (or "time and a half") for any overtime. If you make more than the minimum wage per hour, then you should get 1/2 times your hourly wage whenever you work overtime.

In some cases you can get "double time." If you are paid the minimum wage, double time is \$8.50 per hour. If you work more than 12 hours in one day for the time beyond the first 12 hours you are entitled to double time.

You may also be entitled to double time if you work 7 days in a row and you work more than 8 hours on the 7th day. In that case you should be paid time and a half for the first 8 hours of work and double time for any additional hours. This rule does not apply however if your total hours for the week are less than 30 hours and if you worked less than 6 hours each day.

DOESN'T THE LAW REQUIRE THAT MY EMPLOYER GIVE ME A PAID VACATION?

Unfortunately, neither paid nor unpaid vacations are guaranteed by law.

However, if you have vacation days and have not used them when you leave or have been terminated, you are usually entitled to receive your unused vacation pay.

WHAT ABOUT HEALTH BENEFITS, HOLIDAYS AND SICK DAYS?

The law does not guarantee either health benefits, holidays or sick days. If you are injured on the job, however, your employer must provide insurance for you through the state worker's compensation program.

WELL, IF THE LAW DOESN'T GUARANTEE ME VACATION OR SICK DAYS OR HEALTH BENEFITS, AM I AT LEAST ENTITLED TO REST PERIODS DURING MY WORK HOURS?

It depends on how many hours you are scheduled to work. All workers are entitled to a 10 minute rest break for every 4 hours worked. Your employer may not deduct wages for the rest period. If your daily total work hours are less than 3 1/2 hours, your employer does not have to give you a 10 minute break. If you work at least 5 hours, your employer must give you at least 30 minutes for lunch or dinner. Your employer does not have to pay you for the lunch or dinner break. But you must be relieved of all duties during that 30 minutes or the meal period is considered "on duty" and counted as work time.

AM I SUPPOSED TO PAY FOR THE UNIFORM MY EMPLOYER REQUIRES ME TO WEAR?

No. If your employer requires you to wear a distinctive uniform as a condition of employment, your employer must provide and maintain the uniform. This means that your employer is supposed to pay for the cost of laundering uniforms worn for the job, even if you must clean them at home. The general rule is that you are entitled to one hour's pay each week for laundering your

uniform. If it actually costs more than that to maintain your uniform, your employer must pay the actual cost. If your uniform is made of permanent press material however, your employer does not have to pay you.

Your employer can ask you for a reasonable deposit as security for the return of the uniform but he must give you a receipt. Your employer can deduct the cost of an unreturned uniform from your last pay check only if you have agreed to it in writing. No deductions can be made at any time for normal wear and tear.

CAN MY EMPLOYER MAKE ME PAY FOR CASH SHORTAGES, FOR FOOD ORDERED BY MISTAKE, OR FOR AN ORDER MISTAKENLY LEFT OFF OF THE BILL?

Your employer may not take any deductions from your wages for mistakes without your prior written approval. The law says that your employer is prohibited from taking any wage deductions or requiring reimbursements by employees due to cash shortages, breakage or loss of equipment unless the employer can show that it was due to dishonesty, was a willful act or was caused by the employee's gross negligence.

SHOULD MY EMPLOYER GIVE ME A RECORD OF MY HOURS WORKED?

Yes, your employer should give you a check stub or receipt for your wages, showing exactly what your hours, pay rate and deductions are. This is a way of keeping track of the hours you worked. Such records are essential to avoid cheating by employers and for workers to receive the proper amount due.

If your employer does not keep these records, you should keep a record of your own of all the hours you worked. This might prove useful if you decide to try and collect overtime and unpaid wages later. If you decide to do this, you can

ask for an extra \$100.00 as a penalty for your employer's failure to give you regular wage statements.

WHAT IF I'M FIRED?

If you have lost your job, you have a right to receive all the wages you have earned. You must be paid on your last day of work if you were fired without notice or if you quit and gave your employer advance notice. If you quit without notice, your employer must pay you within 3 days of your last day of work. If your employer does not pay you promptly, you may be able to collect a penalty equal to your daily wages for each day that you were waiting for your pay, up to a maximum of 30 days.

WHAT IF MY BOSS TRIES TO GET BACK AT ME?

It is against the law for your employer to try to scare you or pressure you for filing a wage claim. If this happens, contact the Labor Defense Network or an attorney immediately.

Some workers are afraid to stand up for their rights because they are afraid their boss will fire them, call the Immigration & Naturalization Service, or try to get even in some other way. Sometimes, because the worker needs the money, he/she will keep quiet even though he/she isn't getting paid for all the hours worked. Other times, a worker will file a complaint after being fired. While it is the decision of each worker whether to complain or not and many different factors have to be considered, it is important to remember that all you are doing is standing up for your rights. Some employers count on the silence of their workers to help them make a larger profit. If you are thinking about filing a complaint and are uncertain what to do, please come and talk to a Labor Defense Network representative.

Contact the Labor Defense Network: (213) 389-3581 or (213) 381-6335.

THIS PAMPHLET IS DISTRIBUTED FOR THE PURPOSE OF INCREASING PUBLIC AWARENESS OF THE LAW. THE INFORMATION GIVEN HERE SHOULD NOT BE TAKEN AS LEGAL ADVICE. ADDITIONAL INFORMATION OR LEGAL ADVICE MAY BE OBTAINED BY CALLING THE LABOR DEFENSE NETWORK.

BEFORE JULY 1, 1988, THERE WAS A DIFFERENT MINIMUM WAGE

The minimum wage before July 1, 1988 was \$3.35 per hour. You had to be paid at least this much for the work you did before July 1, 1988. If you worked eight hours per day, five days per week, you had to be paid a minimum of \$26.80 per day (\$134.00 per week). If you worked more than 40 hours in a week or 8 hours in a day, you had the right to \$5.03 per hour. If you worked more than 12 hours a day or 8 hours on the seventh day, you had the right to \$6.70 per hour.



Minimum Wage, Overtime and Other Rights on the Job

EMPLOYMENT LAW OFFICE of the Legal Aid Foundation of Los Angeles
and the LABOR DEFENSE NETWORK — Telephone: (213) 389-3581

Whenever you work, in a factory or at home, you must be paid at least \$4.25 an hour, or \$34.00 for an 8-hour day (before deductions). If you work 40 hours, you should be paid \$170.00 before deductions. **THIS IS THE MINIMUM WAGE REQUIRED BY STATE AND FEDERAL LAW.**

WHAT IF I AM PAID BY THE PIECE?

Even if you are paid for "piecework," the law still requires that your wages be at least the minimum wage for the hours that you work. If you keep a record of your hours, and your piece rate falls below \$4.25 an hour, you may have a right to more wages from your employer. **SAVE YOUR PAY STUBS and KEEP YOUR RECORDS.**

WHAT ABOUT OVERTIME?

In most jobs, you should be paid at least \$6.38 an hour (or "time and a half") if you work more than 8 hours a day or 40 hours a week. If you make more than the minimum wage per hour, even if it is on a piece rate, then you should get 1/2 times your hourly wage whenever you work overtime. If you work more than 12 hours in a day, you must get TWICE your hourly pay for the hours that you work over 12. And if you work seven days in a row, you must get TWICE your hourly pay for the hours that you work over 8 on the seventh day of your workweek.

DID YOU KNOW THAT YOU HAVE A RIGHT TO:

Two paid 10 minute rest periods per day?

Be paid for your lunch hour if you have to

watch machines or are on duty in any way?

Be paid while you are waiting on the job if a machine breaks down or they have run out of materials, even if you cannot work?

Be paid for the cost of laundering distinctive uniforms for the job, even if you must clean them at home? Complain about unsafe or unsanitary working conditions without being fired or harassed by your boss?

Sit down at your job at a seat your boss must furnish for you?

A check stub or receipt for your wages, showing exactly what your hours, pay rate and deductions are?

A decent, clean place to eat and rest during your breaks?

At least 2 hours pay if you report for work and there is nothing for you to do?

WHAT IF MY BOSS TRIES TO GET BACK AT ME?

Some people are afraid that if they stand up for their right to a decent wage, their boss will fire them, or call the Immigration Service, or try to get even in some other way. The law prohibits any action to intimidate or pressure a worker for filing a wage claim. If this problem occurs, contact the Labor Defense Network or an attorney immediately. (A lawsuit may be necessary and you must act within 30 days to protect your rights.)

WHAT IF I LOST MY JOB?

If you have lost your job, you have a right to receive all the wages you have earned. You must be paid on your last day of work if you were fired without notice, or if you quit and gave your boss advance notice. If you quit without notice or if you were fired with notice, your boss must pay you within 3 days of your last day of work. If your boss does not pay you promptly, you may be able to collect a penalty equal to your daily wages for each day that you were waiting for your pay, up to a maximum of 30 days.

IF YOU ARE NOT GETTING THE WAGES THAT YOU SHOULD OR IF THERE ARE OTHER PROBLEMS ON THE JOB, YOU CAN GET FREE, CONFIDENTIAL LEGAL ADVICE FROM THE LABOR DEFENSE NETWORK.

BEFORE JULY 1, 1988, THERE WAS A DIFFERENT MINIMUM WAGE

The minimum wage before July 1, 1988 was \$3.35 per hour. You had to be paid at least this much for the work you did before July 1, 1988. If you worked eight hours per day, five days per week, you had to be paid a minimum of \$26.80 per day (\$134.00 per week). If you worked more than 40 hours in a week or 8 hours in a day, you had the right to \$5.03 per hour. If you worked more than 12 hours a day or 8 hours on the seventh day, you had the right to \$6.70 per hour.



Sueldo Minimo. Tiempo Extra y Otros Derechos en el Trabajo

EMPLOYMENT LAW OFFICE of the Legal Aid Foundation of Los Angeles
and the LABOR DEFENSE NETWORK — Telephone: (213) 389-3581

Siempre que usted trabaje, ya sea en una factoria o en su casa, usted debe ser pagado por lo menos \$4.25 por hora, o \$34.00 por un dia de 8 horas (antes de deducciones). Si usted trabaja 40 horas, debe ser pagado \$170.00 antes de deducciones. ESTE ES EL SUELDO MINIMO REQUERIDO POR LA LEY ESTATAL.

QUE TAL SI LE PAGAN POR PIEZA?

Aunque le paguen por pieza la ley aun requiere que su sueldo sea por lo menos el sueldo minimo por las horas que trabaje. Si usted mantiene un record de su horario, y si el precio por pieza es menos de \$4.25 por hora, usted quiza tenga derecho a mas sueldos de su patron. GUARDE SUS TALONES DE CHEQUE Y MANTENGA SUS RECORDS.

QUE TAL SI TRABAJO TIEMPO EXTRA (OVERTIME)?

En la mayoria de trabajos, se le debe pagar por lo menos \$6.38 por hora (o "tiempo y medio") si usted trabaja mas de 8 horas en un dia o mas de 40 horas por semana. Si usted gana mas del sueldo minimo por hora, aunque sea por trabajo por pieza, entonces se le debe pagar 1/2 veces su sueldo de hora cuando usted trabaje tiempo extra. Si usted trabaja mas de 12 horas en un dia, a usted se le debe pagar DOBLE por hora por las horas que trabajo despues de 12. Y si usted trabaja mas de 7 dias seguidos a usted se le tiene que pagar DOBLE por hora por las horas despues de 8 en su sextimo dia de la semana.

SABIA QUE USTED TIENE DERECHO A:

Dos descansos de 10 minutos por dia?
Que se le pague por su hora de almuerzo si usted tiene que vigilar maquinaria o esta de servicio de cualquier manera?

Que se le pague mientras espera que reparen una maquina o si se le acaban los materiales, aunque usted no pueda trabajar?

Que se le pague por la lavada de uniformes del trabajo, aunque usted los lave en casa?

A quejarse sobre la inseguridad o condiciones perjudiciales para su salud sin que lo despida o lo acostumbre su patron.

A sentarse mientras trabaja en una silla que le debe proveer su patron?

A un talon de cheque o recibo por sus sueldos, que indique exactamente las horas que trabajo, su sueldo por hora y las deducciones que se hicieron?

A un lugar decente y limpio para comer durante sus descansos?

A dos horas de pago si usted llega a trabajar y no hay trabajo?

QUE TAL SI MI PATRON TRATA DE DESQUITARSE?

Algunas personas que temen que su patron les despida o llame al Servicio de Inmigracion si manifiestan sus derechos a un sueldo decente. La ley prohbe cualquier accion que intimide o presione a un trabajador por haber archivado un reclamo de sueldos. Si este problema ocurre, llame a la Red de Defensa Laboral o a un abogado inmediatamente. (Quizas una demanda sea necesaria y usted tenga que actuar dentro de 30 dias para proteger sus derechos.)

QUE SUCEDERIA SI PIERDO MI TRABAJO?

Si usted pierde su trabajo usted tiene derechos a recibir todos los sueldos que usted gano. Se le tiene que pagar en su ultimo dia de trabajo si lo despidieron sin previo aviso o si usted dejo su trabajo y le dio previo aviso a su patron. Si usted dejo su trabajo y no dio previo aviso a su empleador, se le tiene que pagar dentro de 3 dias despues de su ultimo dia. Si su patron no le paga a tiempo, quizas usted tenga derecho a colectar una multa comparable a su salario diario a un maximo de 30 dias.

SI USTED NO ESTA RECIBIENDO LOS SUELdos QUE DEBE, O SI USTED TIENE OTRO PROBLEMA EN EL TRABAJO, USTED PUEDE RECIBIR CONSEJO LEGAL CONFIDENCIAL GRATIS DE PARTE DE LA RED DE DEFENSA LABORAL.

ANTES DE JULIO 1, 1988, HABIA UN SUELDO MINIMO DIFERENTE

El sueldo minimo antes de Julio 1, 1988 era \$3.35 por hora. Usted tenia que ser pagado por lo menos esto por el trabajo que usted hacia antes de Julio 1, 1988. Si usted trabajo 8 horas por dia, cinco dias a la semana, usted tubo que haber sido pagado el minimo de \$26.80 por dia (\$134.00 por semana). Si usted trabajo mas de 40 horas en una semana o 8 horas en un dia, tenia derecho a \$5.03 por hora. Si trabajo mas de 12 horas al dia o 8 horas en el septimo dia, usted tendria derecho a \$6.70 por hora.



Beneficios de Seguro de Desempleo: Renuncia Voluntaria por Buena Razon

EMPLOYMENT LAW OFFICE of the Legal Aid Foundation of Los Angeles
and the LABOR DEFENSE NETWORK — Telephone: (213) 389-3581

Aunque usted haya dejado su trabajo, todavia puede recibir beneficios de desempleo si Usted tenia una "buena razon" para dejarlo.

En esta seccion, explicaremos lo que "buena razon" es, daremos ejemplos de casos por los cuales "buena razon" es frecuentemente disputado, y le diremos lo que puede suceder en la audiencia donde lo principal es si Usted tenia "buena razon" para dejar su trabajo.

DEFINICION

En general, "buena razon" quiere decir un problema serio y obligatorio el cual no puede resolver, y le prohbe trabajar aunque Usted quiera.

EJEMPLOS

Problemas de Translado o Viajar: Usted puede tener una buena razon para dejar su trabajo si, por un cambio de circunstancias, Usted empieza a tener problemas en viajar lo que hace imposible que Usted pueda llegar a su trabajo. Cuando vaya a su audiencia, este preparado para discutir cuanto tiempo le toma ir y venir a su trabajo (traiga mapas y horarios de autobuses para demostrar que no hay forma mas corta; cuanto le cuesta el ir y venir al trabajo (si usted gasta una parte significante de su salario para transportacion, Usted puede tener buena razon para dejar su trabajo); la distancia de su casa a su trabajo y si es que hay alternativas de transportacion mas rapidas, como autobuses y trenes.

Problemas de Familia: Varios problemas de familia son considerados buena razon para dejar su trabajo. Por ejemplo:

Seguir a su esposo/esposa: Si su esposo, esposa o la persona con quien Usted vive obtiene un trabajo nuevo en otra ciudad, y Usted tiene que dejar su trabajo para mantener a la familia junta, Usted tiene buena razon para dejar su

trabajo. Cuando Usted vaya a su audiencia, vaya preparado para explicarle al juez porque fue la persona que tuvo que cambiarse (esta bien decir que su esposo/esposa se rehuso a cambiarse) y porque no era posible que su patron lo cambiara a la nueva ciudad.

Cuidar a un Pariente Enfermo: Si algun pariente esta enfermo, y no hay nadie mas que lo pueda cuidar, y seria imposible o muy caro emplear a alguien para cuidarlo, Usted tiene buena razon para dejar su trabajo. En la audiencia, debe ir preparado para explicar como Usted intento encontrar a otra persona para cuidarlo, porque su esposo/esposa puede cuidar al pariente, y porque no puede obtener permiso de ausencia de su patron.

Cuidado de Ninos: Si hay hijos pequenos quienes necesitan cuidado en su casa, no hay nadie mas quien pueda cuidarlos, y seria imposible o muy caro emplear a alguien para su cuidado, Usted tiene buena razon para decirle al juez lo que Usted hizo para tratar de encontrar a otra persona que lo hiciera, el porque su esposo/esposa no puede cuidar a los ninos, y el porque no pudo obtener permiso de ausencia de su patron.

Tener un hijo: Usted tiene buena razon para dejar su trabajo si estaba embarazada, su patron se rehuso a darle permiso de ausencia, y esta lista y puede regresar a su trabajo (si su patron da permiso de ausencia por enfermedad o por otras razones medicas, el tiene la obligacion legal de dar permiso por razones medicas relacionadas con el embarazo).

Matrimonio: Usted tiene buena razon

para dejar su trabajo si lo deja para casarse y reunirse con su esposo/esposa quien vive y trabaja en una ciudad diferente, pero solo si el matrimonio ocurre poco tiempo despues de haber dejado su trabajo. Lleve copia de su licencia de matrimonio a la audiencia, para indicar su fecha de matrimonio.

Permiso de Ausencia: Si usted tiene que dejar de trabajar por alguna razon temporanea (por ejemplo, por uno de los problemas de familia arriba indicados), Usted debe pedir "permiso de ausencia". Un "permiso de ausencia" quiere decir que el patron le promete dar su trabajo cuando regrese. Trate de que su patron le conceda este permiso por escrito. Si su patron solo le dice que tratara de encontrarle trabajo cuando regrese, esto no es "permiso de ausencia". Si su patron esta de acuerdo en darle un "permiso de ausencia" pero su trabajo no esta disponible cuando usted regrese, entonces usted tiene derecho a beneficios de desempleo. (En casos como este, la ley dice que usted no ha renunciado, si no que se le ha descansado.) Cuando usted vaya a la audiencia debe de estar preparado para provar que su patron prometio darle su trabajo cuando usted regresara. Usted tambien tiene que comprobar que le dio aviso a su patron de que usted iba a regresar y que su patron dijo que no habria trabajo para usted.

Si usted no le pido un permiso de ausencia a su patron, este listo para probar que no hubiera habido ninguna diferencia si lo hubiera hecho. Por ejemplo, pruebe que la compania no tiene ninguna regla de permiso de ausencia o de que otras gentes han solicitado permiso de ausencia por las mismas razones y les fue dicho que esas razones no eran suficientemente satisfactorias.

Si usted fallo y no regreso de un permiso de ausencia y fue despedido por eso, usted tendra que provar que usted notifico a su patron de el problema y no pudo extender el permiso de ausencia y que usted tenia buenas razones por no haber regresado.

Razones por motivo de religion: Si sus obligaciones de trabajo lo forzan a violar sus creencias religiosas, usted puede tener una buena razon para renunciar a su trabajo, pero solo si usted no sabia que el trabajo representaria violar su religion cuando usted lo

acepto. Cuando usted vaya a la audiencia usted tiene que explicarle a el juez porque el trabajo viola sus creencias religiosas (por ejemplo, su religion le prohibe trabajar el dia Sabado). Si es posible, lleve a su ministro o alguna otra persona de su iglesia a testificar acerca de su religion. Explique como sus creencias religiosas son sinceras y firmes. Tambien tiene que estar listo para explicar como las dificultades comenzaron despues de empezar a trabajar alli, como es que Usted trata de resolver su problema, o el porque dicho esfuerzo habria sido una perdida de tiempo. Usted no puede empezar en un empleo en el cual usted sabe que habra conflictos con su religion y despues decir que constituyen buena razon para dejar su trabajo.

Cambios Mayores en su Trabajo: Si su patron hace un cambio mayor en su trabajo normal el cual le afecta negativamente, Usted puede tener buena razon para dejar su trabajo. En su audiencia, Usted debe explicarle al juez cual era su trabajo original, cuando y como su patron trato de cambiar o cambio su trabajo, y como el cambio le dana.

Cambios mayores en su trabajo son cambios en su tareas, su salario, sus horas, sus condiciones, de trabajo o sus beneficios.

El Patron no Cumple Promesa: Usted puede tener buena razon para dejar su trabajo si es que su patron le hizo alguna promesa cuando empezo a trabajar y despues no la cumplio. La promesa debe de ser sobre cosas importantes como tiempo extra, promocion, entrenamiento, aumentos, etc. A menos que la promesa este por escrito o si alguien escucho a su patron cuando la hizo, generalmente es muy dificil probar que la promesa fue verdaderamente hecha.

En su audiencia, Usted debe explicar cual fue la promesa, como es que la promesa ayudo a convencerlo a aceptar ese trabajo, cuando y como la promesa no fue cumplida, y como al no cumplir con la promesa el patron lo ha perjudicado.

Condiciones Ilegales de Trabajo: Usted puede tener buena razon para dejar su trabajo si su patron le pide que trabaje bajo condiciones que son ilegales bajo las leyes de Salud y Seguridad o el codigo de ley laboral. En su audiencia, Usted debe explicar que su

trabajo incluye ciertos riesgos, que hay ciertas precauciones que cualquier persona que hiciera el trabajo las conoceria y tomaria, que el patron le ha forzado a hacer su trabajo sin tomar esas precauciones, que es muy posible que Usted se lastime o que se lastimo cuando hizo su trabajo, y que Usted le ha indicado al patron de el problema pero este no lo ha remediado.

Peticion Ilegal del Trabajo: Usted puede tener buena razon para dejar su trabajo si su patron le pide que Usted haga cosas que violarian la ley. En la audiencia, Usted debe decirle al juez lo que su patron le pedia que hiciera y como es que esto es ilegal.

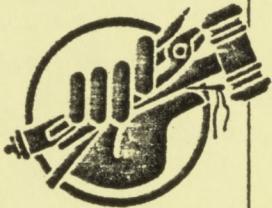
Razones Medicas Personales: Usted puede tener buena razon para dejar su trabajo si su patron le pide hacer algo que le dane la salud. En la audiencia Usted debe explicar cuales son sus tareas, el porque hacerlas seria peligroso para su salud, y lo que Usted hiso para tratar de resolver el problema con su patron, o el porque dichos esfuerzos hubieran sido inutiles. Es buena idea llevar una declaracion firmada por su doctor explicando que el cree que Usted debe dejar su trabajo por razones medicas. Evidencia medica adicional quizas sea necesaria para probar este tipo de caso.

Condiciones Intolerables: Usted puede tener buena razon para dejar su trabajo si condiciones en su trabajo se vuelven tan dificiles que cualquier persona razonable las consideraria intolerables. Un ejemplo de condiciones intolerables es hostigamiento sexual continuo o el uso constante de palabras ofensivas. Este es un caso dificil de probar. En su audiencia, Usted debe de estar preparado para explicar en que forma y a que grado sus condiciones de trabajo se han hecho intolerables y que intentos hizo usted para resolver el problema con su patron, o el porque dichos esfuerzos hubieran sido inutiles. Si Usted ha archivado una queja, por la conducta de su patron, con alguna agencia gubernamental (Comision Para Oportunidades Iguales de Trabajo, el Departamento de Empleo y Vivienda Justa, la Administracion de Seguridad y Salud Ocupacional, el Comisionado de Trabajo, etc.), lleve una copia de la queja a su audiencia. Si usted archivo un agravio con su sindicato, presente una copia de ella.

RESUMEN

Aunque las circunstancias seran diferentes en cada caso, para ganar un caso que incluye disputas sobre "buena razon", Usted generalmente tendra que convencer al juez que:

1. Existia algun problema en el trabajo o en su casa;
2. El problema era serio; y
3. Usted intento resolver su problema con el patron antes de dejar su trabajo; o
4. Hubiera sido inutil hablar con su patron sobre el problema.



How to File a Claim with the Labor Commissioner

EMPLOYMENT LAW OFFICE of the Legal Aid Foundation of Los Angeles
and the LABOR DEFENSE NETWORK — Telephone: (213) 389-3581

This package contains information about filing a claim for unpaid wages with the State Labor Commissioner. If you follow the instructions given in this package, you should be able to complete your own claim.

If you have trouble completing any of the forms in this package, you are welcome to come to any of the Labor Defense Network clinic sites for help.

1. Completing and Filing Your Claim Form

The first step is to fill in your "Initial Report or Claim" form (See Attachment A). If you do not have all of the information you need to complete your claim form, you should get that information as soon as possible and finish filling in your form.

When your claim form is completed, take it or mail it to the office of the Labor Commissioner located in the area where you worked. You will not be given a copy of your claim form, so if you want a copy for your personal records you should make one before you go to the Labor Commissioner's office. A list of all the Labor Commissioner's offices in this area is attached to these instructions (Attachment B).

If you go to the Labor Commissioner's office you should first go to the complaint desk or window. If you do not speak English, ask for a translator.

Give your claim form to the person at the complaint desk or window. That person will ask you questions about your case and will prepare another form, called a "Complaint" (See Attachment C). You will be asked to sign both your claim form and the Complaint.

It does not cost anything to file a claim with the Labor Commissioner.

2. Notice That Your Claim Has Been Filed

The Labor Commissioner must tell your employer that you have filed a claim for unpaid wages. A "Notification of Claim Filed" letter (See Attachment D) will be sent to your employer. A copy of this letter will be sent to you at the same time it is sent to your employer.

In this letter the Labor Commissioner will state why you feel your employer owes you money. You should read this part of the letter carefully. If you think that the Labor Commissioner has stated your case correctly, you should simply put your copy of the letter with your other personal papers. If you think the Labor Commissioner has made a mistake in stating your case, you should write to the Labor Commissioner immediately. If you would like help writing this letter, you can come to the clinic.

3. Your Employer's Response

Your employer must respond to the Labor Commissioner's letter within the time period stated in the letter. The Labor Commissioner will let you know when your employer has responded to the letter. If your employer sends the Labor Commissioner a check for your money, the Labor Commissioner will forward the money to you.

If your employer refuses to pay you, the Labor Commissioner will send you a letter stating why your employer does not think you have a good claim. You MUST respond to this letter, in writing, within ten days. In the letter, you should explain why your employer is

wrong. Be sure to mention any evidence you have to support your claim. For example, if you kept your pay stubs or a record of the hours you worked, mention that in your letter.

If you do not write to the Labor Commissioner explaining why your employer is wrong, your case may be closed and the Labor Commissioner will not help you get your money (See Attachment E for an example of this kind of letter). If you would like help writing your letter to the Labor Commissioner, you can come to the clinic.

4. Conference Between You and Your Employer

If your employer refuses to pay you, the Labor Commissioner may decide to schedule either an "informal conference" or a "pre-hearing conference." The purpose of both these types of conferences is to work things out between you and your employer. You will both be asked to attend the conference, and you will both receive a "Notice of Informal or Pre-Hearing Conference" (See Attachment F) telling you the date, time and place of the conference.

You should come to the clinic as soon as possible after you receive this notice, so we can prepare you for your conference.

After the conference the Deputy Labor Commissioner who is handling your case may recommend (a) that your employer pay you, or (b) that your case be closed because you do not have a good claim. The Deputy Labor Commissioner may also recommend that no decision be made on your case until after a hearing is held.

5. Notice of Your Hearing

If a hearing is necessary the Labor Commissioner will mail a letter to both you and your employer telling you that it will be scheduled in five or six months.

Eight to ten weeks before your hearing you will receive a "Notice of Hearing" (See Attachment G). The notice will tell you the date, time and place where your hearing will be held.

You should come to the clinic as soon as possible after you receive this notice so we can prepare you for your hearing.

6. The Labor Commissioner's Decision

The Labor Commissioner will make a decision about your case approximately ten to fifteen days after your hearing. You will receive a copy of a "Decision, Order, or Award of the Labor Commissioner" (See Attachment H) by certified mail.

7. Appealing the Labor Commissioner's Decision

If you are unhappy with the Labor Commissioner's decision you can file an appeal. Your employer can do this too, if he or she is unhappy with the decision.

If you decide to file an appeal you MUST do it within ten days after you receive the "Decision, Order, or Award," and you must use a special form (See Attachment D).

You can come to the clinic if you would like help filling out your appeal form.

REMEMBER:

The Labor Commissioner will get in touch with you only by mail. It is therefore very important that you let the Labor Commissioner's office know if you change your address.

Whenever you come to the clinic for help you should bring all of the papers you think you will need, such as your pay stubs and letters you have received from the Labor Commissioner.

**INITIAL REPORT OR
CLAIM**

PLEASE PRINT ALL INFORMATION

FOR OFFICE USE ONLY					
TAKEN BY	PROCEEDING NUMBER				ACTION
DATE TAKEN	PROGRAM		SOURCE		IND. CODE
	DO	BOFE	1	2	
FIELD INVESTIGATION REFERRAL					
REFERRING OFFICE				DATE	

YOUR NAME		SOCIAL SECURITY NO.	NO. TAX EXEMPTIONS
YOUR ADDRESS — NUMBER AND STREET, APARTMENT OR SPACE NO., CITY, ZIP CODE		HOME PHONE NO.	WORK PHONE NO.
KIND OF WORK DONE (OCCUPATION)	DATE OF HIRE	CALIFORNIA DRIVER'S LICENSE NO.	DATE OF BIRTH
WORK DONE AT — NUMBER AND STREET, CITY, COUNTY, ZIP CODE		PUBLIC WORKS PROJECT? <input type="checkbox"/> YES <input type="checkbox"/> NO	WAS YOUR JOB UNION? <input type="checkbox"/> YES <input type="checkbox"/> NO

AGAINST

NAME OF BUSINESS	EMPLOYER'S NAME	<input type="checkbox"/> BANKRUPTCY <input type="checkbox"/> BUSINESS SOLD <input type="checkbox"/> INSOLVENCY	
ADDRESS OF BUSINESS	TELEPHONE NUMBER		
NAME OF PERSON IN CHARGE	TYPE OF BUSINESS	ESTIMATED NO. OF EMPLOYEES:	MINORS EMPLOYED? <input type="checkbox"/> YES <input type="checkbox"/> NO

WAGES – CONDITIONS OF EMPLOYMENT

RATE OF PAY — PER HOUR, DAY, WEEK OR MONTH (SPECIFY)				PAID BY PIECE RATE?	DID YOU WORK SPLIT SHIFTS?				
\$	<input type="checkbox"/> YES <input type="checkbox"/> NO		<input type="checkbox"/> YES <input type="checkbox"/> NO						
TOTAL HOURS WORKED PER DAY:		PAID OVERTIME? <input type="checkbox"/> YES <input type="checkbox"/> NO		4 DAY / 10 HOUR WORKWEEK? <input type="checkbox"/> YES <input type="checkbox"/> NO		IF YES, WRITTEN AGREEMENT? <input type="checkbox"/> YES <input type="checkbox"/> NO			
PER WEEK:									
ARE YOU STILL WORKING FOR THIS EMPLOYER? <input type="checkbox"/> YES <input type="checkbox"/> NO		QUIT DISCHARGED		ON WHAT DATE?		IF QUIT, DID YOU GIVE 72 HOURS NOTICE? <input type="checkbox"/> YES <input type="checkbox"/> NO		WERE YOU PAID AT TIME OF DISCHARGE? <input type="checkbox"/> YES <input type="checkbox"/> NO	
HAVE YOU ASKED FOR YOUR WAGES? <input type="checkbox"/> YES <input type="checkbox"/> NO		IF YES, ON WHAT DATE?		CHARGED FOR SHORTAGES? <input type="checkbox"/> YES <input type="checkbox"/> NO		RECORD OF HOURS WORKED KEPT? <input type="checkbox"/> YES <input type="checkbox"/> NO			
HOW WERE YOU PAID? <input type="checkbox"/> BY CHECK <input type="checkbox"/> IN CASH		GIVEN A DEDUCTION STATEMENT? <input type="checkbox"/> YES <input type="checkbox"/> NO		UNIFORM / TOOLS REQUIRED? <input type="checkbox"/> YES <input type="checkbox"/> NO		IF YES, FURNISHED BY EMPLOYER? <input type="checkbox"/> YES <input type="checkbox"/> NO			
MEAL PERIOD: <input type="checkbox"/> ON DUTY <input type="checkbox"/> OFF DUTY		MEALS FURNISHED? <input type="checkbox"/> YES <input type="checkbox"/> NO		IF YES, WRITTEN AGREEMENT? <input type="checkbox"/> YES <input type="checkbox"/> NO		MEALS FURNISHED: <input type="checkbox"/> BREAKFAST <input type="checkbox"/> LUNCH <input type="checkbox"/> DINNER			
LODGING FURNISHED: <input type="checkbox"/> INDIVIDUAL ROOM		<input type="checkbox"/> SHARED ROOM <input type="checkbox"/> APARTMENT		RENTAL VALUE OF APT. TO PUBLIC \$		CASH ADVANCES (IF ANY) \$			

GROSS WAGES CLAIMED (Do Not Deduct Payroll Taxes)

GROSS WAGES CLAIMED (Do Not Deduct)		NUMBER OF HOURS, DAYS, WEEKS OR MONTHS CLAIMED (SPECIFY)	
FROM (DATE) 19	TO (DATE) 19		
AT THE RATE OF — PER HOUR, DAY, WEEK OR MONTH (SPECIFY) \$		SUB-TOTAL →	\$
BRIEF EXPLANATION OF ISSUES (Use Additional Sheet If Necessary)		MINUS TOTAL OF CASH OR CREDITS RECEIVED →	\$
		AMOUNT DUE OR BALANCE CLAIMED →	\$

I HEREBY CERTIFY, That this is a true statement to the best of my knowledge and belief. Unless action on this claim is taken in accordance with Section 98 of the Labor Code, I assign all wages and all penalties accruing because of their nonpayment, and all liens securing them, to the Labor Commissioner of the State of California to collect in accordance with law.

MY NAME MAY BE USED IN ANY INVESTIGATION. YES NO

(Signed) Date

Address.

DO NOT WRITE ON THIS SIDE – For Office Use Only

CLAIMANT	AGAINST	PROCEEDING NUMBER	ACTION
ADDRESS	ADDRESS	ASSIGNED/REASSIGNED TRANSFERRED/REFERRED } TO & DATE	
CHANGED: DATE & TO	FOR CLAIMANT	FOR STATE	
	VERIFIED WAGES \$ _____	X X X X	
	RECOVERED - PAID DIRECT \$ _____	X X X X	
	RECOVERED - PAID DLSE \$ _____	\$ _____	
	DEDUCTIONS \$ _____	X X X X	
	TOTALS RECOVERED \$ _____	\$ _____	
			DATE TAKEN DATE CLOSED



Where to File Wage Claims

EMPLOYMENT LAW OFFICE of the Legal Aid Foundation of Los Angeles
and the LABOR DEFENSE NETWORK — Telephone: (213) 389-3581

LABOR COMMISSIONER'S OFFICES [State] (a partial listing)

- | | |
|--|---|
| [] 107 S. Broadway, #5015
Los Angeles
213-620-5130 | [] 107 S. Broadway, #5025
Los Angeles, CA
213-620-2831 |
| [] 6430 Sunset Blvd., #301
Hollywood
213-736-3161 | [] 1 Manchester Blvd., #604
Inglewood
213-674-6522 |
| [] 4310 Long Beach Blvd.
Long Beach
213-428-7491 | [] 13215 East Penn St., #300
Whittier
213-698-2278 |
| [] 8155 Van Nuys Bl., #950
Panorama City
818-782-3733 | [] 300 South Park Ave., #830
Pomona
714-623-4306 |

U.S. DEPARTMENT OF LABOR [Federal]

- [] Wage & Hour Division
3660 Wilshire Blvd.
Los Angeles
213-894-4972

SMALL CLAIMS COURT (MUNICIPAL COURT), LOS ANGELES DISTRICT

- [] 110 North Grand Avenue, Room 429
Los Angeles, CA 90012
Open: 8:30 a.m. - 4:30 p.m.; night court at 5:30 p.m. on
Mondays or on Tuesdays when Monday is a holiday.)
213-974-6131 (taped message, except 2:30 - 4:30 p.m.)
- [] Small Claims Court Advisor
Department of Consumer Affairs
213-974-9759

[See phone directory for Small
Claims Courts in other cities.]

LABOR COMMISSIONER, STATE OF CALIFORNIA
Department of Industrial Relations
Division of Labor Standards Enforcement

PLAINTIFF

[Redacted Plaintiff Name]

[Redacted Plaintiff Address]

[Redacted Plaintiff City, State, Zip]



DEFENDANT

[Redacted Defendant Name]

[Redacted Defendant Address]

[Redacted Defendant City, State, Zip]

STATE CASE NUMBER

NOTICE OF CLAIM FILED

The State Labor Code requires immediate payment of wages conceded to be due, and provides for additional wages accrued pursuant to Labor Code Section 203 as a penalty for non-payment of wages within statutory time limits. A claim has been filed with this Division by the plaintiff shown above, alleging non-payment of:

and also alleging additional wages accrued pursuant to Labor Code Section 203 as a penalty at the rate of \$ _____ per day for an indeterminate number of days not to exceed thirty days.

In addition, you may be subject to penalties due to the State of California, which may be assessed pursuant to Labor Code Section 210.

You may settle this claim by mailing to this office immediately a check or money order made payable to the Labor Commissioner. Should you dispute this claim, submit a written statement *IN DUPLICATE* of the facts and include payment of any amount conceded to be due. Explain why payment of wages due was not made in the required timely manner. Payment must be accompanied by a separate or detachable itemized statement of any deduction made as provided by the Labor Code. Do not make payroll deductions from amounts paid as penalties.

We must request a written reply, in duplicate, to this letter within 10 days from the date below.

If this claim is not settled, it will be resolved as provided by Section _____ of the California Labor Code.

DATED:

Original — DLSE

DLSE 546 (REV. 8/84)



NOTICE OF CLAIM FILED

Deputy Labor Commissioner

L. C. 98

LABOR COMMISSIONER, STATE OF CALIFORNIA
Department of Industrial Relations
Division of Labor Standards Enforcement



PLAINTIFF

DEFENDANT

STATE CASE NUMBER

ANSWER

Defendant answers the complaint on file as follows:

AGREES:

DENIES:

(Set forth any particulars in which the complaint is inaccurate or incomplete and the facts upon which you intend to rely. Use additional sheet if necessary.)

Defendant certifies that the foregoing, including attachments, is true and correct to the best of his/her knowledge and belief.

Executed at _____, California, on _____, 19 _____.
[Handwritten signature]

(Signature of person answering, with title if answer is made on behalf of another person or entity.)

(Type or print your name and name of person or entity, if any, on whose behalf this form is signed.)



ANSWER

LABOR COMMISSIONER, STATE OF CALIFORNIA
Department of Industrial Relations
Division of Labor Standards Enforcement

FOR COURT USE ONLY

PLAINTIFF

DEFENDANT

COURT NUMBER

STATE CASE NUMBER

ORDER, DECISION OR AWARD OF THE LABOR COMMISSIONER

1. The above-entitled matter came on for hearing before the Labor Commissioner of the State of California as follows:

DATE:

CITY: , California.

2. IT IS ORDERED THAT:

- A. Plaintiff recover from Defendant:

\$ _____ for wages or compensation;

\$ _____ for additional wages accrued pursuant to Labor Code Section 203 as a penalty, *and that same shall not be subject to payroll or other deduction*;

\$ _____ for recovery on dishonored payroll check;

\$ _____ other (specify).

\$ _____ TOTAL AMOUNT OF AWARD

- B. Plaintiff take nothing by virtue of his/her complaint herein.

3. The herein Order, Decision or Award is based upon the Summary of Hearing and Reasons for Decision attached hereto and incorporated herein by reference.

4. The parties herein are notified and advised that this Order, Decision or Award shall become the final Order, Decision or Award of the Labor Commissioner and enforceable as a judgment by an appropriate court within ten (10) days after service upon them unless they exercise their right to appeal to the appropriate court*. In case of appeal the necessary filing fee must be paid by the appellant *and appellant must, immediately upon filing an appeal with the appropriate court, serve a copy of the appeal request upon the Labor Commissioner*. If an appeal is filed by a corporation, present law requires that the corporation must be represented by an Attorney-at-Law, licensed to practice in the State of California during all phases, including the filing of Notice of Appeal. A corporation's failure to be represented by an attorney may be cause for dismissal. Labor Code Section 98.2(b) provides that if the party seeking review by filing an appeal to the court is unsuccessful in such appeal, the court shall determine the costs and reasonable attorney's fees incurred by the other parties to the appeal and assess such amount as a cost upon the party filing the appeal.

*

LABOR COMMISSIONER, STATE OF CALIFORNIA

By _____

Hearing Officer

DATED:

White — DLSE; Blue — Defendant; Green — Plaintiff.

85 93423

L. C. 98

DLSE 535 (REV. 11/84)

ORDER, DECISION OR AWARD OF THE LABOR COMMISSIONER



FILE YOUR ANSWER AT:

LABOR COMMISSIONER, STATE OF CALIFORNIA
Department of Industrial Relations
Division of Labor Standards Enforcement
107 South Broadway, Room 5015
Los Angeles, California 90012

PLAINTIFF

[Redacted area]

DEFENDANT

[Redacted area]

STATE CASE NUMBER

NOTICE OF CLAIM FILED AND HEARING



NOTICE! A Hearing will be held before the Labor Commissioner of the State of California as follows:

PLACE:

DATE:

TIME:

or as soon thereafter as the matter can be heard, upon the complaint filed herein, a copy of which complaint is attached and hereby served upon you. This hearing will be held pursuant to Labor Code Sections 98(a) et. seq.

TO THE DEFENDANT:

1. Within 10 days after the service upon you of this Notice, you may file an Answer with the Labor Commissioner at the office shown above. The hearing scheduled in this matter will be conducted regardless of whether you file or submit an Answer.
2. You may be but need not be represented by counsel. If you wish to seek the advice of counsel in this matter you should do so promptly so that your written answer, if any, may be filed on time. You have the right to have a representative present at the hearing. It is not necessary that such representative be an attorney.
3. You will be given the opportunity at the scheduled hearing to present any relevant evidence; present witnesses; and cross-examine witnesses testifying against you. Application for the issuance of subpoenas to compel the attendance of necessary witnesses and the production of books and documents can be made to the Office of the Labor Commissioner. The scheduled hearing in this matter will be held regardless of whether you appear. An order, decision or award will be issued in accordance with the evidence offered at the hearing. A copy of the rules of practice and procedure governing these hearings is available at any district office of the Labor Commissioner.
4. Any wages awarded pursuant to this hearing will accrue interest from the date they were due until they are paid, in accordance with Labor Code Section 98.1(c).
5. This matter can be disposed of without hearing by your remitting in full the amount specified in the Complaint, including the additional wages pursuant to Labor Code Section 203 (if stated in the Complaint), in which event you need not file or submit an Answer.

Dated:

Hearing Officer

NOTICE TO:

: You are served

<input type="checkbox"/> AS AN INDIVIDUAL DEFENDANT	<input type="checkbox"/> AS THE PERSON OPERATING UNDER THE FICTITIOUS NAME OF:
ON BEHALF OF:	
<input type="checkbox"/> A CORPORATION <input type="checkbox"/> A PARTNERSHIP OR ASSOCIATION	

FOR COURT USE ONLY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
 MUNICIPAL COURT OF THE STATE OF CALIFORNIA
 JUSTICE COURT OF THE STATE OF CALIFORNIA

COUNTY OF _____ JUDICIAL DISTRICT _____

PLAINTIFF

DEFENDANT

COURT NUMBER

NOTICE OF APPEAL

NOTICE OF APPEAL of the Order, Decision or Award of the Labor Commissioner in State Case Number _____

dated _____, and served upon the undersigned appellant, _____

on _____, is given and filed pursuant to Labor Code Section 98.2.

Appellant attaches as Exhibit "A" a copy of the Order, Decision or Award appealed and requests that the Clerk of the Court set the cause for hearing before the above-entitled court, where it shall be heard *de novo* in accordance with Labor Code Section 98.2, and that the Clerk of the Court give Notice of time, date and place of the new trial to each of the following parties and the Labor Commissioner's office at the places listed below. Appellant certifies that a copy of this Notice of Appeal has been served upon the Labor Commissioner and a copy has been mailed to the Respondent, as shown below.

APPELLANT (OR ATTORNEY) (NAME, ADDRESS, TELEPHONE NUMBER)

OFFICE OF THE LABOR COMMISSIONER (ADDRESS AND TELEPHONE NUMBER)
STATE LABOR COMMISSIONER

RESPONDENT (OR ATTORNEY) (NAME, ADDRESS, TELEPHONE NUMBER)

Dated:

State of California
Department of Industrial Relations
Division of Labor Standards Enforcement

Signature of Appellant



How to File a Claim with the Labor Commissioner

EMPLOYMENT LAW OFFICE of the Legal Aid Foundation of Los Angeles
and the LABOR DEFENSE NETWORK — Telephone: (213) 389-3581

This package contains information about filing a claim for unpaid wages with the State Labor Commissioner. If you follow the instructions given in this package, you should be able to complete your own claim.

If you have trouble completing any of the forms in this package, you are welcome to come to any of the Labor Defense Network clinic sites for help.

1. Completing and Filing Your Claim Form

The first step is to fill in your "Initial Report or Claim" form (See Attachment A). If you do not have all of the information you need to complete your claim form, you should get that information as soon as possible and finish filling in your form.

When your claim form is completed, take it or mail it to the office of the Labor Commissioner located in the area where you worked. You will not be given a copy of your claim form, so if you want a copy for your personal records you should make one before you go to the Labor Commissioner's office. A list of all the Labor Commissioner's offices in this area is attached to these instructions (Attachment B).

If you go to the Labor Commissioner's office you should first go to the complaint desk or window. If you do not speak English, ask for a translator.

Give your claim form to the person at the complaint desk or window. That person will ask you questions about your case and will prepare another form, called a Complaint (See Attachment C). You will be asked to sign both your claim form and the Complaint.

It does not cost anything to file a claim with the Labor Commissioner.

2. Notice That Your Claim Has Been Filed

The Labor Commissioner must tell your employer that you have filed a claim for unpaid wages. A "Notification of Claim Filed" letter (See Attachment D) will be sent to your employer. A copy of this letter will be sent to you at the same time it is sent to your employer.

In this letter the Labor Commissioner will state why you feel your employer owes you money. You should read this part of the letter carefully. If you think that the Labor Commissioner has stated your case correctly, you should simply put your copy of the letter with your other personal papers. If you think the Labor Commissioner has made a mistake in stating your case, you should write to the Labor Commissioner immediately. If you would like help writing this letter, you can come to the clinic.

3. Your Employer's Response

Your employer must respond to the Labor Commissioner's letter within the time period stated in the letter. The Labor Commissioner will let you know when your employer has responded to the letter. If your employer sends the Labor Commissioner a check for your money, the Labor Commissioner will forward the money to you.

If your employer refuses to pay you, the Labor Commissioner will send you a letter stating why your employer does not think you have a good claim. You MUST respond to this letter, in writing, within ten days. In the letter, you should explain why your employer is

wrong. Be sure to mention any evidence you have to support your claim. For example, if you kept your pay stubs or a record of the hours you worked, mention that in your letter.

If you do not write to the Labor Commissioner explaining why your employer is wrong, your case may be closed and the Labor Commissioner will not help you get your money (See Attachment E for an example of this kind of letter). If you would like help writing your letter to the Labor Commissioner, you can come to the clinic.

4. Conference Between You and Your Employer

If your employer refuses to pay you, the Labor Commissioner may decide to schedule either an "informal conference" or a "pre-hearing conference." The purpose of both these types of conferences is to work things out between you and your employer. You will both be asked to attend the conference, and you will both receive a "Notice of Informal or Pre-Hearing Conference" (See Attachment F) telling you the date, time and place of the conference.

You should come to the clinic as soon as possible after you receive this notice, so we can prepare you for your conference.

After the conference the Deputy Labor Commissioner who is handling your case may recommend (a) that your employer pay you, or (b) that your case be closed because you do not have a good claim. The Deputy Labor Commissioner may also recommend that no decision be made on your case until after a hearing is held.

5. Notice of Your Hearing

If a hearing is necessary the Labor Commissioner will mail a letter to both you and your employer telling you that it will be scheduled in five or six months.

Eight to ten weeks before your hearing you will receive a "Notice of Hearing" (See Attachment G). The notice will tell you the date, time and place where your hearing will be held.

You should come to the clinic as soon as possible after you receive this notice so we can prepare you for your hearing.

6. The Labor Commissioner's Decision

The Labor Commissioner will make a decision about your case approximately ten to fifteen days after your hearing. You will receive a copy of a "Decision, Order, or Award of the Labor Commissioner" (See Attachment H) by certified mail.

7. Appealing the Labor Commissioner's Decision

If you are unhappy with the Labor Commissioner's decision you can file an appeal. Your employer can do this too, if he or she is unhappy with the decision.

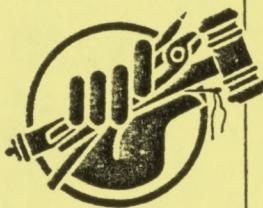
If you decide to file an appeal you MUST do it within ten days after you receive the "Decision, Order, or Award," and you must use a special form (See Attachment I).

You can come to the clinic if you would like help filling out your appeal form.

REMEMBER:

The Labor Commissioner will get in touch with you only by mail. It is therefore very important that you let the Labor Commissioner's office know if you change your address.

Whenever you come to the clinic for help you should bring all of the papers you think you will need, such as your pay stubs and letters you have received from the Labor Commissioner.



How to File a Claim with the Labor Commissioner

EMPLOYMENT LAW OFFICE of the Legal Aid Foundation of Los Angeles
and the LABOR DEFENSE NETWORK — Telephone: (213) 389-3581

This package contains information about filing a claim for unpaid wages with the State Labor Commissioner. If you follow the instructions given in this package, you should be able to complete your own claim.

If you have trouble completing any of the forms in this package, you are welcome to come to any of the Labor Defense Network clinic sites for help.

1. Completing and Filing Your Claim Form

The first step is to fill in your "Initial Report or Claim" form (See Attachment A). If you do not have all of the information you need to complete your claim form, you should get that information as soon as possible and finish filling in your form.

When your claim form is completed, take it or mail it to the office of the Labor Commissioner located in the area where you worked. You will not be given a copy of your claim form, so if you want a copy for your personal records you should make one before you go to the Labor Commissioner's office. A list of all the Labor Commissioner's offices in this area is attached to these instructions (Attachment B).

If you go to the Labor Commissioner's office you should first go to the complaint desk or window. If you do not speak English, ask for a translator.

Give your claim form to the person at the complaint desk or window. That person will ask you questions about your case and will prepare another form, called a "Complaint" (See Attachment C). You will be asked to sign both your claim form and the Complaint.

It does not cost anything to file a claim with the Labor Commissioner.

2. Notice That Your Claim Has Been Filed

The Labor Commissioner must tell your employer that you have filed a claim for unpaid wages. A "Notification of Claim Filed" letter (See Attachment D) will be sent to your employer. A copy of this letter will be sent to you at the same time it is sent to your employer.

In this letter the Labor Commissioner will state why you feel your employer owes you money. You should read this part of the letter carefully. If you think that the Labor Commissioner has stated your case correctly, you should simply put your copy of the letter with your other personal papers. If you think the Labor Commissioner has made a mistake in stating your case, you should write to the Labor Commissioner immediately. If you would like help writing this letter, you can come to the clinic.

3. Your Employer's Response

Your employer must respond to the Labor Commissioner's letter within the time period stated in the letter. The Labor Commissioner will let you know when your employer has responded to the letter. If your employer sends the Labor Commissioner a check for your money, the Labor Commissioner will forward the money to you.

If your employer refuses to pay you, the Labor Commissioner will send you a letter stating why your employer does not think you have a good claim. You MUST respond to this letter, in writing, within ten days. In the letter, you should explain why your employer is

wrong. Be sure to mention any evidence you have to support your claim. For example, if you kept your pay stubs or a record of the hours you worked, mention that in your letter.

If you do not write to the Labor Commissioner explaining why your employer is wrong, your case may be closed and the Labor Commissioner will not help you get your money (See Attachment E for an example of this kind of letter). If you would like help writing your letter to the Labor Commissioner, you can come to the clinic.

4. Conference Between You and Your Employer

If your employer refuses to pay you, the Labor Commissioner may decide to schedule either an "informal conference" or a "pre-hearing conference." The purpose of both these types of conferences is to work things out between you and your employer. You will both be asked to attend the conference, and you will both receive a "Notice of Informal or Pre-Hearing Conference" (See Attachment F) telling you the date, time and place of the conference.

You should come to the clinic as soon as possible after you receive this notice, so we can prepare you for your conference.

After the conference the Deputy Labor Commissioner who is handling your case may recommend (a) that your employer pay you, or (b) that your case be closed because you do not have a good claim. The Deputy Labor Commissioner may also recommend that no decision be made on your case until after a hearing is held.

5. Notice of Your Hearing

If a hearing is necessary the Labor Commissioner will mail a letter to both you and your employer telling you that it will be scheduled in five or six months.

Eight to ten weeks before your hearing you will receive a "Notice of Hearing" (See Attachment G). The notice will tell you the date, time and place where your hearing will be held.

You should come to the clinic as soon as possible after you receive this notice so we can prepare you for your hearing.

6. The Labor Commissioner's Decision

The Labor Commissioner will make a decision about your case approximately ten to fifteen days after your hearing. You will receive a copy of a "Decision, Order, or Award of the Labor Commissioner" (See Attachment H) by certified mail.

7. Appealing the Labor Commissioner's Decision

If you are unhappy with the Labor Commissioner's decision you can file an appeal. Your employer can do this too, if he or she is unhappy with the decision.

If you decide to file an appeal you MUST do it within ten days after you receive the "Decision, Order, or Award," and you must use a special form (See Attachment I).

You can come to the clinic if you would like help filling out your appeal form.

REMEMBER:

The Labor Commissioner will get in touch with you only by mail. It is therefore very important that you let the Labor Commissioner's office know if you change your address.

Whenever you come to the clinic for help you should bring all of the papers you think you will need, such as your pay stubs and letters you have received from the Labor Commissioner.



Unemployment Benefits: Representing Yourself at a Hearing

EMPLOYMENT LAW OFFICE of the Legal Aid Foundation of Los Angeles
and the LABOR DEFENSE NETWORK — Telephone: (213) 389-3581

WHAT IS A HEARING?

Many people who apply for unemployment insurance have no trouble getting their checks. Sometimes, however, the unemployment office (State Employment Development Department or "EDD") or an employer will challenge a worker's right to get unemployment insurance. If this happens to you, you should file an appeal, saying that you think you should get unemployment checks.

You must file an appeal within 20 days after the date on the NOTICE OF DETERMINATION (See Attachment A) which says that you are not eligible for unemployment benefits. You can file your appeal by completing an APPEAL form (See Attachment B) at your local EDD office. (Read "Unemployment Benefits: How to File Your Own Appeal" for more details.) When you file your appeal you should also ask for a CONTINUED CLAIM form (See Attachment C.) You must use this form until a final decision is made in your case.

Several weeks after you file your appeal, an administrative hearing will be scheduled. At the hearing an Administrative Law Judge will listen to your case. He or she has the power to reverse EDD's decision if it is incorrect. The judge's decision will be based only on information presented at the hearing or included in the EDD file, which both parties will have an opportunity to see.

More than one-third of the people who challenge the denial of their unemployment insurance benefits win after a hearing. The success rate for individuals who are prepared is much higher. Unemployment insurance benefits law is not highly technical; the difference in success is primarily due to preparation. If you are prepared and present your case well, you have a very good chance of getting your benefits.

LEARN WHAT YOU NEED TO SHOW TO WIN YOUR CASE.

A problem a lot of people have representing themselves is that they get to the hearing without understanding what they need to show to win their case. The legal reason for EDD's decision will be on the NOTICE OF DETERMINATION and the NOTICE OF HEARING (See Attachment D). The NOTICE OF DETERMINATION should also have a brief written statement of the facts of your case.

PLAN HOW YOU CAN BEST PROVE YOUR CASE.

You need to plan before the hearing how you can best prove your case. Often your testimony will be the most important part of your case, but you should also consider whether you need to bring witnesses, documents, photographs or other types of evidence. The hearing will be your best and probably only chance to prove your case. The Administrative Law Judge will almost never allow you more time to gather and submit additional evidence after your hearing.

CHECK THE FILE BEFORE THE HEARING.

To avoid being surprised by something presented by the other side, you should call the appeals office where your hearing is scheduled a few days before the hearing and make an appointment to see your file. (Sometimes hearings are held at local EDD offices instead of the appeals office). The file will contain a more detailed statement of EDD's reasons for denying your application for unemployment benefits. Often it will also contain documents from your employer or notes of conversations EDD had with your employer. By reviewing the file in advance, you will have a much better idea of what the other party is going to attempt to show and you can be better prepared to challenge it with your own evidence.

MAKE A LIST

Make a list of what you need to show and how you intend to show it. Include on this list the things you need to say when the judge lets you tell your side of the case. It isn't enough to just have in your mind how you are going to testify. You will probably be distracted by questions from the judge or the employer. If you do not have a list of what you need to show, you may forget some of the things you want to say. After the hearing it will be too late.

If you have a list of things to be shown, you can check off each one as it is mentioned during the hearing. If you are interrupted or distracted during the hearing, you can always look back to your list and see if any points have been missed. The judge will always give each party a chance to add any further testimony before he or she ends the hearing. When the judge indicates that the hearing is about to end, look at the list and make sure that every point you wanted to make has been discussed. If you missed anything, tell the judge that you have a few more things to say and then go over those points.

Even experienced lawyers and paralegals can overlook important issues if they do not prepare a list. Don't make that mistake.

USING AFFIDAVITS AND DECLARATIONS.

Sometimes an AFFIDAVIT or a DECLARATION can be used instead of direct testimony by a witness. (AFFIDAVITS and DECLARATIONS are signed, written statements that are made under oath.) This is particularly true when the statement you need is from a neutral party who has no reason to make a false statement. For example, if you want to show that you were at your doctor's office on a given date, a written statement from the doctor should be enough. Free AFFIDAVIT forms can be obtained at the Appeals Board office. (In fact, while it is preferable to get all written statements in the form of an AFFIDAVIT or DECLARATION, even an unsworn statement will usually be accepted when it is from someone who has no real personal interest in your case.)

On the other hand, even a sworn

AFFIDAVIT or DECLARATION is not going to help you very much if it involves facts that the other side will disagree with through testimony of actual witnesses. For example, if you were discharged for supposedly being insubordinate to your supervisor and you expect your supervisor to appear at the hearing, a sworn AFFIDAVIT from a co-worker stating that you were not insubordinate is of little help. A judge is generally required to give greater weight to the testimony of a witness than to the written statement of someone who is not present at the hearing. This is because the judge and the other side have no opportunity to question the person who only signs the statement but does not show up in person.

USING DOCUMENTS

Frequently you will want to use documents, such as your old time sheets, previous evaluations, or other records at your hearing. If you cannot obtain such evidence voluntarily, you can request what is called a SUBPENA DUCES TECUM (the legal term for a subpoena requesting documents instead of the presence of a witness; see Attachment F for a sample) from the Appeals Board Office. The SUBPENA DUCES TECUM must be delivered to the person who has the documents in his or her possession. You should be ready to explain why you need the documents to help present your case.

WHO WILL BE AT THE HEARING.

An administrative hearing is not a public trial. It will be conducted in a private room. In addition to the Administrative Law Judge who will decide the case, a person called a court reporter may be present to take notes about what is said. Some judges prefer to use a tape recorder rather than a court reporter. In that case, there may be a hearing assistant present to operate the tape recorder.

Most hearings involve questions concerning why you left or lost your most recent job. In those cases, your last employer will be present. Some cases involve issues unrelated to your past employment, such as your availability for work, or whether you refused a job without justification. In those cases, an EDD representative familiar with your case will be at the hearing to present the case against you.

Employers, like employees, have a right to be represented at hearings. Sometimes employers hire attorneys or trained representatives to handle their case.

Finally, witnesses for both sides may be present. No one else will be present unless one of the parties requests it and the other party has no objection.

HOW TO ACT AT THE HEARING

At your hearing, formal court rules will not be applied. But the hearing is in every other sense like a formal court hearing, and you should be neat and you should not wear casual clothes. You expect the judge to take your case seriously; it is important that you show by your dress and actions that you also take the proceedings seriously.

The judge should be referred to as "Your Honor," not "Judge." Be courteous and respectful towards the judge, regardless of how he or she behaves. Different judges have different styles. Some go out of their way to seem friendly and helpful; others are rude. Usually their attitude has nothing to do with how they are going to rule in your case. You will not help your case by getting angry at the judge. You also will not help your case by trying to flatter the judge or by being especially friendly. You will help your case if you show that you take the hearing seriously and are prepared.

HOW THE HEARING WILL PROCEED.

It is the judge's job to control the proceedings. He or she usually will begin the hearing by asking the parties if they are ready, by identifying all the people present, and by briefly stating the issue to be decided. The judge will then state the order in which he or she wants to hear the testimony and witnesses of each party and will explain that each side will be given a chance to respond to the other side's testimony and to ask any questions they may have of the other side and its witnesses. Follow the procedure set down by the judge. Do not interrupt the other party or witnesses when they are testifying. If you wish to respond to particular points, make notes so you will remember them when it is your turn to testify.

HOW YOUR TESTIMONY WILL BE PRESENTED.

Most of your testimony will be presented by answering questions. Most judges will not allow you to make a long speech about your case. Instead, the judge will ask you a series of questions to bring out what he or she thinks are the important points of your case. As you answer the judge's questions, check off the items on your check list which are covered.

When you are asked questions by the judge or the other side, answer them briefly and to the point. Do not try to figure out what the person asking the questions is "getting at" or attempt to explain your answer or guess about questions that have not yet been asked. You will always be given a chance to say more after the judge or the other side finishes asking you questions. That is the right time to add more detail or longer explanations. If you give long complicated answers to simple and direct questions, the judge may think that you are being evasive or that you are lying.

Maintain as much eye contact with the judge while you are testifying as you can. While you will occasionally want to glance at your list to check off points which have been covered, do not read your answers, or if you are afraid to look the judge in the eye as you testify, it will make what you say seem less believable.

INTRODUCING DOCUMENTS

At the beginning of the hearing the judge will probably ask each side if it has documentary evidence, such as affidavits, time sheets, photographs, etc., that it wishes to submit. It is a good idea to have two extra copies of every document you use, so you can give one to the judge, give one to the opposing party and keep one for yourself. If you cannot afford to make copies in advance, make sure you arrive early enough to ask a clerk or receptionist to make copies before the hearing. They will do this without charge.

If the judge doesn't ask for additional evidence at the beginning of the hearing, introduce your documents when they are being discussed by you or your witnesses, and ask the judge to admit them into evidence at the

beginning of the hearing, refer to each item as it becomes relevant. It is important that you do this so the judge knows what the document is and why it is important to your case. For example, if you submitted a phone bill to show that you called your employer on a certain date, the bill itself would be meaningless to the judge unless you show through your testimony the employer's telephone number and point out where it was reflected on the bill.

QUESTIONING YOUR WITNESSES.

If you have brought any witnesses, the judge will usually expect you to ask them questions. You should have gone over with them what questions you are going to ask before the hearing, so you know what their answers will be. As we said before, it can be dangerous to call a witness if you do not know what he or she is going to say. You should have every point which you expect your witness or witnesses to cover included on your checklist, and you should mark off each point as it is made.

The judge and the other party will have an opportunity to ask your witnesses questions. You will then have another chance to ask your witnesses questions to clarify or expand on matters raised by the judge's or the other side's questions.

QUESTIONING THE OTHER SIDE.

After the judge has let both sides put on their testimony and submit their evidence, he or she will give each side an opportunity to ask questions of the other. This is called cross-examination. When questioning witnesses for the other side, avoid being hostile. Cross-examination intended to "shake up" the other side usually only gives them a chance to repeat, with greater emphasis, things they have already said and which are harmful to you. Generally, the only time you want to ask questions of the other side is when they have left out of their testimony, facts which are helpful to your case and which they probably cannot deny. For example, if you received a favorable evaluation shortly before your discharge or had never received a written warning about your work, you might wish to ask your employer about these facts. An employer will seldom deliberately lie about a fact which could be established by documentary evidence. (However, should the

employer lie about documents you know to exist, tell the judge you are surprised by the answer and request that the original records be subpoenaed.) You may wish to ask the other side about facts or incidents that can't be proven with documents, but do not be shocked if the answers you get are false or misleading. If that happens, it is better to just state your own version of the facts when the judge asks you if you have anything further to say, rather than trying to change the other side's story through cross-examination.

DON'T ARGUE.

Remember that you are at the hearing because there is a disagreement over the facts or how the law should be applied to the facts. It is the job of the judge to decide both of these issues, based on the evidence presented at the hearing. There is nothing to be gained by arguing with the other side or arguing with the judge. Similarly, most judges do not appreciate and are not persuaded by expressions of disbelief, displays of anger, or sarcastic remarks about the testimony of the other side. The judge is more likely to believe your testimony if he or she views you as a reasonable and mature person than if you appear aggressive or bad-tempered.

CLOSING REMARKS.

After each side has presented its testimony and has been given a chance to ask questions of the other side the judge will usually ask both parties if they have anything further to say before the hearing is finished. If there is anything on your checklist that you have not yet covered, raise it at this point. However, if all the items have been checked off, don't be repetitive. Repeating the same testimony over and over again tends to make it less, rather than more, persuasive.

It is seldom necessary or helpful to make a statement after a hearing. However, if you feel strongly that you would like to make some general comments about the hearing, make sure they are brief and relate to the evidence presented. Statements as to why you think you are entitled to benefits or why you believe the other side has not been truthful are not helpful. It is the judge's job to decide those issues and, like most of us, he or she will not like being

told how to do his or her job.

When the judge states that the hearing is closed, thank him or her and leave. Do not make statements to the other side or to the judge after the hearing is finished. Do not ask the judge how he or she is going to decide the case. Occasionally a judge will indicate at the end of the hearing what his or her decision is going to be. This is unusual, however, and should not be expected. In most cases, you will not know how the judge is going to decide until the decision is mailed to you.

Note: The information provided so far should help you in representing yourself at the hearing. The following information is provided so that you will understand the entire process. You can look it over more carefully after your hearing.

KEEP FILING CONTINUED CLAIM FORMS AFTER THE HEARING.

Remember, even if the judge decides in your favor, you will get benefits, but only for weeks in which you are unemployed and looking for work. This means that while you are waiting for the judge's decision you have to keep looking for work and mailing in the biweekly CONTINUED CLAIM forms.

WHEN YOU WILL GET THE DECISION.

Some judges mail their decisions within a few days after the hearing. Other may take a month or more. If you have not received the decision after 5 or 6 weeks, call the Unemployment Insurance Appeals Board office where you had your hearing and ask them if a decision has been made.

If you move after the hearing, it is important that you give your new address to the Appeals Board office. If you are unhappy with the decision, you will have only 20 days to file another appeal and you cannot count on the decision being forwarded to you by the post office on time.

WHEN YOU WILL GET YOUR CHECKS.

If you receive a favorable decision and have continued to look for work and to submit CONTINUED CLAIM forms, you should begin

receiving a weekly benefit check and retroactive checks automatically. However, to get your checks in the shortest possible time, you should take a copy of your decision to the nearest EDD office as soon as you receive it and ask them to help you get your checks. If you do, it should not take more than 1 or 2 weeks for your checks to begin arriving.

WHAT TO DO IF YOU ARE UNHAPPY WITH THE JUDGE'S DECISION.

Each side has 20 days to file a written appeal from an unfavorable decision with the California Unemployment Insurance Appeals Board in Sacramento. If the 20th day falls on a Saturday, Sunday or holiday, you have until the next regular business day. You can obtain a form called APPEAL TO THE CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD at any EDD office. This appeal can be filed at any EDD office, or it can be mailed directly to the California Unemployment Insurance Appeals Board at 714 "P" Street, Sacramento, California 95814. Although this appeal form asks you to provide a statement of facts and reasons for decision, you do not have to give detailed statements. You should also ask for a copy of the hearing transcript, which the Appeals Board will send to you for free. Once you have filed the appeal and requested a transcript, it is a good idea to look for help from an attorney or a paralegal who knows about unemployment insurance law to help you prepare a written argument to support your appeal.

The Appeals Board will send you a letter when it receives your appeal. This letter will tell you that you have 20 days to ask for a chance to send the Appeals Board new evidence or a written argument, if you want to.

If you receive a favorable decision and the other party appeals, you will be sent notice of that fact. An appeal by the department or an employer will not prevent you from receiving your benefits. However, if the appeal is successful your benefits could end. Therefore, it is recommended that you also request a copy of the transcript when the other party has appealed. You should also talk to a lawyer or paralegal if this happens.

If your claim is denied by the California

Unemployment Insurance Appeals Board, you will have 6 months to file a lawsuit challenging that decision in the Superior Court of the county in which you live. You will need the services of an attorney to file such a lawsuit. It is important that you get legal assistance promptly because the 6 month period cannot be extended.

ATTACHMENT A
(a reduced facsimile)

STATE OF CALIFORNIA
EMPLOYMENT DEVELOPMENT DEPARTMENT
NOTICE OF DETERMINATION / RULING

SSA NUMBER 14 16 600

DATE MAILED 03/27/87
BENEFIT YEAR BEGAN 03/01/87

P BARTO.
261 7TH AVE
LOS ANGELES

1688

CA 90018

EDD FIELD OFFICE: 1688
AVALON SERVICE CENTER
161 WEST VENICE BLVD
LOS ANGELES CA900153538
TELEPHONE: (213) 744-2660

YOU ARE NOT ELIGIBLE TO RECEIVE BENEFITS UNDER CALIFORNIA UNEMPLOYMENT INSURANCE CODE SECTION 1256 BEGINNING 03/01/87 AND CONTINUING UNTIL YOU RETURN TO WORK AFTER THE DISQUALIFYING ACT AND EARN \$830 OR MORE IN BONA FIDE EMPLOYMENT, AND REOPEN YOUR CLAIM.

YOU WERE DISCHARGED FOR YOUR UNAUTHORIZED POSSESSION OF PROPERTY BELONGING TO YOUR EMPLOYER. THEREFORE IT MUST BE HELD THAT YOU WERE DISCHARGED FOR ACTIONS WHICH INJURED, OR TENDED TO INJURE YOUR EMPLOYER'S INTERESTS. SECTION 1256 PROVIDES - AN INDIVIDUAL IS DISQUALIFIED IF THE DEPARTMENT FINDS HE VOLUNTARILY QUIT HIS MOST RECENT WORK WITHOUT GOOD CAUSE OR WAS DISCHARGED FOR MISCONDUCT FROM HIS MOST RECENT WORK. SECTION 1256A PROVIDES - AN INDIVIDUAL DISQUALIFIED UNDER SECTION 1256 IS NOT ELIGIBLE FOR BENEFITS UNTIL HE HAS AGAIN WORKED IN BONA FIDE EMPLOYMENT AND EARNED FIVE TIMES HIS WEEKLY BENEFIT AMOUNT.

IF YOU HAVE REASON TO BELIEVE THAT THIS DECISION IS NOT CORRECT, YOU MAY APPEAL IT. YOU MAY REQUEST AN APPEAL FORM FROM THE OFFICE WHERE YOU ARE NOW FILING OR YOU MAY WRITE A LETTER OF APPEAL TO THAT OFFICE. THE REASONS WHY YOU DO NOT AGREE WITH THIS DECISION MUST BE WRITTEN IN YOUR APPEAL.

WHILE AN APPEAL IS PENDING YOU MUST CONTINUE TO FILE A WEEKLY CLAIM IN THE FIELD OFFICE FOR EACH WEEK THAT YOU CONTEND YOU ARE ELIGIBLE. IF THE FINAL DECISION HOLDS YOU ELIGIBLE, YOU CAN BE PAID ONLY FOR THOSE WEEKS FOR WHICH YOU HAVE FILED A WEEKLY CLAIM AND MET ALL OTHER ELIGIBILITY REQUIREMENTS.

ANY APPEAL FROM THIS NOTICE MUST BE FILED ON OR BEFORE 04/15/87 TO BE TIMELY.

DE1688 CT

DEPARTMENT REPRESENTATIVE: C RAMIR

ATTACHMENT D: NOTICE OF HEARING
(a reduced facsimile)

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

NOTICE OF HEARING

BOARD

CASE NO : ING - 197 -0001-

CLAIMANT : JESSE BLACK
APPELLANT 1102 BROADWAY
LOS ANGELES CA 90061

ADMIN. LAW JUDGE: JUDY FOLSO

CL REP: NONE

SSA NO: 66-48-585

ER REP: NONE

EMPLOYER :

* DATE & TIME: TUESDAY, FEBRUARY 24, 1987 AT 11:15 AM
* PLACE : 12700 S. AVALON BLVD LOS ANGELES CA
* NOTE : REPORT TO APPEALS WAITING SECTION

IMPORTANT-ARRIVE TEN MINUTES EARLY; BE PROMPT; THE TIME WILL BE NECESSARY
FOR YOU TO EXAMINE DEPT. CLAIM AND INTERVIEW RECORDS. Bring to the hearing
any witnesses, medical statements, employment records and other evidence.
Failure by appellant to attend may result in appeal dismissal.

ISSUES ARE:(Section references are in the Un. Ins. Code unless otherwise noted.)

DETER

TO: CLAIMANT EMPLOYER
PLEASE BRING YOUR COPY OF THE DETERMINATION TO
THE HEARING FOR USE OF THE ADMINISTRATIVE LAW
JUDGE.

DIRECT INQUIRIES TO:
INGLEWOOD OFFICE OF APPEALS
1 MANCHESTER BLVD., 4TH FLOOR
INGLEWOOD, CA 90301-1750
PHONE: (213) 412-6143

DATE MAILED: 2/ 3/87

SEE "APPEAL INFORMATION" ENCLOSED

ATTACHMENT E: SUBPENA (FRONT)

(a reduced facsimile)

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of:

John E. Doe
153 So. Vermont Ave.
Los Angeles, CA 90004

- SUBPENA
 SUBPENA DUCES TECUM
(production of records, etc.)

LA-30612 Office of Appeals Case No.

The People of the State of California Send Greetings To:

Otis Z. Ham

1560 Main St., Los Angeles, CA 90016

WE COMMAND YOU, that all and singular business and ~~excuses~~ being set aside, you appear before an Administrative Law Judge of the California Unemployment Insurance Appeals Board on

Date and time July 27, 1979 at 11:00 a.m.

Place 8855 East Valley Blvd.
Rosemead, CA 91062

then and there to testify in the above-entitled pending matter; and that you bring with you and there produce the following named documents now in your custody or under your control, to wit:

None

(If subpoena ends, type "None")

This subpoena is authorized by Sections 407 and 1953 of the California Unemployment Insurance Code. Obedience to subpoenas issued under this Code may be enforced by application to the Superior Court as set forth in Article 2, Chapter 2, Part 1 of Division 3 of Title 2 of the Government Code.

Given under my hand this 10 day of July, 1979

/s/ Charles Walsh

Administrative Law Judge

Los Angeles Office of Appeals

SEE INSTRUCTIONS AND DECLARATION OF SERVICE ON BACK

NAME OF PERSON SERVED

DATE OF SERVICE

Distance
Miles

Otis Z. Ham

7/11/79 yes

DE 1040 REV. 11-19-70

\$12.00

\$10.00

\$22.00

I declare under penalty of perjury that the foregoing is true and correct.

Date: July 11, 1979

John E. Doe

153 So. Vermont Ave.

Los Angeles CA 90004

TO BE FILLED OUT BY A WITNESS CLAIMING FEES

I attended the hearing in Case No. _____ either pursuant to the subpoena herein or voluntarily in lieu of being subpoenaed, and request payment of:

- (a) Witness Fees at \$12.00 per day for _____ day(s)
 (b) Mileage Fees, for miles actually traveled to the place of hearing, one-way,
 _____ miles at 3.20 per mile

TOTAL FEES

Name of Witness
(Please Print)

Street Address

City

ZIP

Approved:

Administrative Law Judge, CUIAB

SUBPENA (BACK)

ATTACHMENT F:
SUBPENA DUCES TECUM

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of:

John E. Doe
153 So. Vermont Ave.
Los Angeles, CA 90004

- SUBPENA
 SUBPENA DUCES TECUM
 (production of books, records, etc.)

LA-30612 Office of Appeals Case No.

The People of the State of California Send Greetings To:

Charles T. Smith
1560 Main St., Los Angeles, CA 90016

WE COMMAND YOU, that all and singular business and excuses being set aside, you appear before an Administrative Law Judge of the California Unemployment Insurance Appeals Board on

Date and time July 27, 1979 at 11:00 a.m.

Place 8855 East Valley Blvd.
Rosemead, CA 91062

there and there to testify in the above-entitled pending matter; and that you bring with you and there produce the following named documents now in your custody or under your control, to wit:

1. All personnel records pertaining to John E. Doe.
2. Job description of duties for job classification "Laborer" as set forth in written agreement between Acme Construction Co. and Local 1432, Steelworkers Union.

(See subp. order, page "front")

This subpoena is authorized by Sections 407 and 1953 of the California Unemployment Insurance Code. Obedience to subpoenas issued under this Code may be enforced by application to the Superior Court as set forth in Article 2, Chapter 2, Part 1 of Division 3 of Title 2 of the Government Code.

Given under my hand this 10 day of July, 1977

/s/ Charles Walsh
 Administrative Law Judge

LOS ANGELES Office of Appeals

SEE INSTRUCTIONS AND DECLARATION OF SERVICE ON BACK

DG 1010 REV. 11-10-75

I declare under penalty of perjury that the foregoing
 is true and correct.

Date: _____ 19____

TO BE FILLED OUT BY A WITNESS CLAIMING FEES

I attended the hearing in Case No. LA-30612 under pursuant to the subpoena herein or voluntarily in view of being subpoenaed, and request payment of:

- (a) Witness Fees at \$12.00 per day for 1 day(s) \$12.00
 (b) Mileage Fees, for miles actually traveled to the place of hearing, 50 miles at \$.30 per mile 10.00

Total Fees 22.00

Name of Witness
 (Please Print) Charles T. Smith

Street Address 150 Main St.

City Rosemead, CA Zip 90016

(BACK)

Approved:
 Administrative Law Judge, CUIA



Beneficios de Seguro de Desempleo Representandose a Si Mismo en Una Audiencia

EMPLOYMENT LAW OFFICE of the Legal Aid Foundation of Los Angeles
and the LABOR DEFENSE NETWORK — Telephone: (213) 389-3581

¿QUE ES UNA AUDIENCIA?

Algunas personas que aplican para seguro de desempleo no tienen ningun problema para recibir sus cheques. Pero a veces, el Departamento de Desempleo, o un patron desafian el derecho que un trabajador tiene de recibir seguro de desempleo. Si esto le pasa a usted, puede pedir una peticion para un apelamiento diciendo que usted considera que debe de recibir cheque de desempleo.

Usted debe hacer la peticion de apelamiento durante los primeros 20 dias despues de la fecha de la NOTICIA DE DETERMINACION (Vea anexo A) la cual dice que no califica para recibir beneficios de desempleo. Usted puede archivar su apelacion completando una forma de APPEAL (apelamiento)(Vea anexo B) en su oficina local de el Departamento de Desempleo. (Lea lo siguiente: BENEFICIOS DE SEGURO DE DESEMPLEO: "Como hacer su propia peticion de apelamiento" para mas detalles.) Cuando usted haga su peticion de apelamiento tambien tiene que pedir una forma de RECLAMACION CONTINUA (CONTINUED CLAIM Form) (Vea Anexo C). Usted puede usar esta forma hasta que se haya hecho una decision final en su caso.

Algunas semanas despues de que usted haga la peticion de apelamiento, una audiencia administrativa se llevara a cabo. En la audiencia, un juez oira su caso. El o Ella tienen el poder de cambiar la decision de el departamento de desempleo si es que es incorrecta. La decision de el Juez estara basada solamente en la informacion que sea presentada en la audiencia o incluida en el expediente de el Departamento de Desempleo, la cual tendran oportunidad de ver ambos lados interesados.

Mas de un tercio de la gente que desafia la decision de que les hayan negado sus beneficios de seguro de desempleo gana despues de una audiencia. El indice de exito de

individuos que son representados por asistentes legales o por abogados es mucho mas alto. La Ley de beneficios de seguro de desempleo no es muy tecnica; la diferencia en tener exito esta primordialmente en la preparacion. Si usted esta preparado y presenta bien su caso, tiene una buena posibilidad de ganar sus beneficios.

APRENDA QUE TIENE QUE PROBAR PARA GANAR SU CASO.

Uno de los problemas que muchas personas confrontan cuando se representan a si mismos es que llegan a la audiencia sin entender que necesitan demostrar para ganar el caso. La razon legal porque el Departamento le esta negando el caso esta escrita en la NOTICIA DE RESOLUCION y en la NOTICIA DE AUDENCIA (Vea Anexo D). Su determinacion inicial contiene un breve sumario de los datos de su caso.

PLANEE LA MEJOR MANERA PARA PROBAR SU CASO.

Necesita planear antes de su audiencia la mejor manera de probar su caso. Casi siempre su testimonio es considerado la parte mas importante de su caso, pero debe de considerar si necesitara presentar testigos, documentos, fotografias y otros tipos de evidencia. La audiencia sera su mejor y probablemente su unica oportunidad de probar su caso. El juez casi nunca permite mas tiempo para conseguir evidencia adicional despues de su audiencia.

CHEQUEE EL EXPEDIENTE ANTES DE SU AUDIENCIA.

Para evitar una sorpresa por algo que el lado opuesto vaya a presentar en la audiencia, debe de llamar unos dias antes de su audiencia a la oficina de apelacion para hacer una cita y revisar su expediente. (Hay veces en que la audiencia toma lugar en la oficina de Desempleo local en lugar de la oficina de apelacion). El

expediente contiene datos mas especificos acerca de la razon porque sus beneficios de Desempleo fueron negados. Muchas veces contiene documentos de su patron o notas de conversaciones que el Departamento tuvo con su patron. Al examinar su expediente en adelantado, va a tener mejor idea que es lo que su patron va a tratar de probar en la audiencia y va a poder estar preparado para presentar su evidencia.

HAGA UNA LISTA.

Haga una lista de lo que necesita probar y como intentara de probarlo. Incluya en su lista lo que necesita decirle al juez para probar su caso. No es suficiente tener en su mente como va a testificar. Probablemente va a hacer distraido por preguntas que el juez o su patron le hagan. Si no tiene una lista de lo que necesita probar, se le puede olvidar algo que necesite decir. Despues de la audiencia ya es muy tarde.

Si tiene una lista de lo que necesita, puede checarla cuando los puntos que usted quiere decir son mencionados en la audiencia. Si es interrumpido o distraido durante la audiencia, siempre puede referirse a su lista en caso de que algo importante se le haya olvidado. El juez siempre le dara oportunidad a las dos personas para presentar testimonios adicionales antes de cerrar la audiencia. Cuando el juez indique que la audiencia esta a punto de terminar, vea su lista para estar seguro de que todos los puntos importantes han sido discutidos. Si algo ha faltado, digale al juez que todavia tiene algo que decir y entonces cubra esos puntos.

Hasta abogados y consejeros legales pueden olvidarse de un punto importante si no preparan una lista. No cometa ese error.

COMO USAR TESTIGOS Y CITACIONES.

Su testimonio es la mejor manera de establecer su reclamacion. Pero cuando usted espera que el lado opuesto vaya a oponerse a lo que usted diga, le ayudara tener algun testigo que soporte su testimonio. A veces testigos favorables a su caso no quieren asistir a la audiencia porque es inconveniente o porque temen al patron. Cuando usted sabe que su testigo no va a atender voluntariamente, debe de obtener una citacion (subpena) (Vea Anexo E

para un ejemplo) que requiere al testigo atender. Las citaciones son faciles de obtener. Puede obtener una en la oficina de Apelacion Tribunal donde su caso va a ser escuchado. Solamente tiene que explicar que el testimonio de esa persona es necesario en su audiencia. Si tiene alguna pregunta de como llenar la citacion, el empleado de la Oficina de Apelacion Tribunal le puede ayudar.

Puede solicitar una citacion aunque su testigo atienda voluntariamente porque elCodigo de Desempleo proporciona por cada dia de testimonio y \$.20 por milla para presentarse en la audiencia. Si piensa que una citacion (subpena) es necesaria o deseable, debe de obtenerla lo mas pronto posible porque tiene usted u otra persona que entregar la citacion personalmente al testigo. El Tribunal de Apelacion no se encarga de entregar o mandar la citaciones a las testigos.

Este seguro de lo que su testigo va a decir antes de la audiencia. Algunas veces el testigo le dira que no quiere asistir a la audiencia porque es inconveniente o por temor al patron, cuando en realidad la razon es porque no esta de acuerdo con usted. No debe de sentirse apenado al preguntarle especificamente que va a testificar en la audiencia. Algunas personas piensan que es impropio examinar el testimonio de un testigo con el o ella antes de la audiencia. Al contrario, es muy importante discutir el testimonio para no tener ninguna sorpresa en la audiencia. Si lo que el testigo va a decir le va a danar o no le va a ayudar en su caso, usted no debe pedirle que asista a la audiencia.

COMO USAR DECLARACIONES.

A veces una declaracion puede ser usada en lugar de un testimonio directo. (Declaraciones son testimonios escritos y firmados bajo juramento). Esto es particularmente cierto cuando la declaracion es de una persona neutral la cual no tiene razon porque mentir. Por ejemplo, si uno quiere probar que en cierto dia estuvo en la oficina de su doctor, una declaracion de su doctor sera suficiente. La planilla de declaracion puede ser obtenida en la oficina del Tribunal, gratis. (Aunque es preferible que los papeles esten en forma de declaracion bajo juramento, un papel que no este firmado bajo juramento, un papel que no

este firmado bajo juramento puede ser aceptado mientras provenga de una persona que no tenga interes en su caso.

Al contrario, ni una declaracion jurada le ayudara mucho si envuelve hechos en los que el lado opuesto no va a estar de acuerdo por medio de testimonio actual de testigos. Por ejemplo, si usted fuera despedido por insubordinacion a su supervisor y usted espera que su supervisor se presente ante la audiencia, una declaracion jurada declarando que usted no se insubordino, le sera de poca ayuda. Generalmente, se requiere que un juez le de mas valor al testimonio de un testigo que a una declaracion escrita de alguien que no esta presente en la audiencia. Esto es porque el juez y el lado opuesto no tendran la oportunidad de hacerle preguntas a la persona que firma la declaracion y que no aparece en persona.

USANDO DOCUMENTOS.

Frecuentemente usted va a querer usar sus documentos, como su tarjeta en que se marca la hora de entrada y salida, evaluaciones previas, u otros documentos en su audiencia. Si acaso no puede obtener esas pruebas voluntariamente, las puede pedir con lo que se llama una SUBPENA DUCES TECUM (el termino legal para una notificacion por medio de una citacion de comparecer que suplica documentos en lugar de la presencia de un testigo, Vea Anexo F para un ejemplo) de parte de la Oficina de Apelacion. La citacion debe de ser entregada a la persona que tiene los documentos en su posesion. Usted debe estar listo para explicar porque necesita los documentos para presentar su causa.

¿QUIEN ESTARA PRESENTE EN LA AUDIENCIA?

Una audiencia administrativa no es un juicio publico. Sera conducida en un cuarto privado. Junto con el juez de derecho administrativo que decidira la causa, una persona llamada redactor de las causas, o taquigrafo, estara presente para notar lo que diga. Algunos jueces prefieren usar grabadoras en lugar de taquigrafos. En ese caso, estara un asistente presente para operar la grabadora.

Casi todas las audiencias se tratan de asuntos de el porque usted dejo su trabajo mas reciente. Algunas causas se tratan de puntos

que no estan relacionados a su empleo pasado, por ejemplo si usted es disponible para trabajar, o si usted ha rehusado un trabajo sin justificacion. En esos casos, un representante de EDD que esta familiarizado con su causa estara presente en la audiencia para presentar la causa contra usted.

Empleadores, al igual que empleados, tienen el derecho de ser representados en las audiencias. Algunas veces los empleadores ocupan abogados o representantes para que traten su causa.

Finalmente, testigos de los dos lados pueden estar presentes. Nadie mas estara presente, solamente que uno de los interesados en la causa lo pidan y el otro interesado no tenga inconveniente en ello.

COMO CONDUCIRSE EN LA AUDIENCIA.

En su audiencia, reglas formales de corte no son aplicadas. Pero la audiencia en todo otro aspecto es formal, y debe de vestir y conducirse en manera formal. No existe un codigo de vestir, pero se debe vestir de una manera aseada y no con ropa casual. Usted espera que el juez tome su caso seriamente; es importante que demuestre que usted tambien toma el caso seriamente por su manera de vestir.

Debe de referirse al juez como "Su Honorable" no "juez." Debe de referirse al juez con respeto y cortesia. Cada juez tiene diferente estilo. Unos son amigables y desean ayudarlo; otros son rudos. Casi siempre la actitud del juez no tiene nada que ver con la manera en que va a decidir su caso. No ayudara en su caso si se enoja con el juez. Tampoco le va a ayudar en su caso el que usted halage al juez o sea muy amigable. La manera de favorecer su caso es ensenandole al juez que esta preparado y toma la audiencia seriamente.

COMO PROCEDERA LA AUDIENCIA.

Es el trabajo de el juez en controlar el procedimiento, el o ella comenzara la audiencia pro preguntar a los participantes si estan listos, identificara a las personas presentes, y hablará brevemente acerca de el punto que se va a decidir. El juez entonces dira en que orden el o ella va a oir el testimonio de los testigos y

tambien explicara que cada lado va a tener la oportunidad de responder al testimonio de el otro lado y hacer preguntas a los testigos. Siga el procedimiento de el juez. No interrumpa a la persona testificando ni a los testigos. Si quiere responder algun punto en particular, haga una nota para que se acuerde cuando le llegue su turno a testificar.

COMO SERA PRESENTADO SU TESTIMONIO

La mayor parte de su testimonio sera presentado en la forma de contestar las preguntas. El juez no permitira que haga una larga discusion sobre su caso. mientras que esta respondiendo a las preguntas de el juez, marque en su lista todos los puntos que ya presento.

Cuando le hagan a usted las preguntas, contestelas brevemente. Siempre uno tiene bastante tiempo para decir o presentar otros puntos antes de que se termine la audiencia. Si usted contesta las preguntas en una forma complicada, el juez va a pensar que no esta contestando la pregunta o que esta mintiendo.

Trate de ver al juez "ojito a ojito" cuando conteste la pregunta y vaya marcando su lista de puntos. No debe de leer directamente de su papel.

INTRODUCCION DE DOCUMENTOS

Al principio de la audiencia el juez probablemente le preguntara a cada lado si tiene evidencia documentaria, asi como declaraciones juradas, records de horarios, fotografias, etcetera, que deseen someter. Es buena idea tener dos copias de todos los documentos que usted vaya a presentar para que le de una al juez, una al partido opuesto y guarde una usted. Si usted no tiene los fondos para hacer copias con anticipacion, trate de llegar temprano para pedirle a un oficinista o recepcionista que le haga copias antes de la audiencia. Ellos haran esto sin cobrarle a usted.

Si el juez no pide evidencia adicional al principio de la audiencia, introduzca sus documentos cuando sean discutidos por usted o por sus testigos y pidale al juez que los admita como evidencia. Aunque el juez acepte toda su evidencia documentaria al principio de la audiencia, refierase a cada articulo en el tiempo

en que se haga pertinente. Es muy importante que usted haga esto para que el juez sepa para que es el documento y porque es de importancia a su caso. Por ejemplo, si usted somete una factura de telefono para comprobar que le llamo a su patron en cierto dia, la factura como documento no tendra valor para el juez si usted no puede comprobar con un testimonio el numero de telefono de su patron y senalar el lugar en donde esta apuntado en la factura.

INTERROGANDO A SUS TESTIGOS.

Si usted ha presentado testigos, el juez usualmente esperara que usted haga preguntas. Usted debe de haber revisado con sus testigos lo que les vaya a preguntar antes de la audiencia para que usted sepa lo que van a contestar. Como hemos dicho, puede ser desfavorable llamar a un testigo si usted no sabe lo que el o ella van a decir. Incluyendo en su lista que tiene debe de asegurarse de todos los puntos que espera sus testigos hagan, y debe de marcar cada punto al tiempo en que se haga.

El juez y el partido opuesto tendran la oportunidad de hacerle preguntas a sus testigos. Usted entonces tendra otra oportunidad de hacerle preguntas al juez por el lado opuesto.

INTERROGANDO AL OTRO LADO.

Despues de que el juez ha dejado que los dos lados den su testimonio y sometan su evidencia, el o ella le dare a cada lado una oportunidad para hacerle preguntas al otro. Esto es a lo que se le llama interrogatorio. Cuando interroge a testigos de el otro lado, evite ser hostil. El interrogatorio esta hecho con el proposito de "temorizar" al otro lado, usualmente solamente da una oportunidad de repetir con mas enfasis cosas que han sido dichas y que son desfavorables para usted. Generalmente, la unica vez en la cual usted debe de interrogar al otro lado es cuando han dejado de incluir en su testimonio hechos que favorecen a su caso y que ellos probablemente no pueden negar. Por ejemplo, si usted recibio una evaluacion favorable poco antes de que fue despedido o nunca recibio un aviso escrito sobre su trabajo, usted si gusta, podria interrogar a su patron sobre estos hechos. Un patron casi nunca miente con deliberacion sobre hechos que pueden ser establecidos por evidencia documentaria. Pero si el patron miente sobre

documentos que usted sabe existen, digale al juez que usted esta sorprendido por la contestacion y pida que los records originales sean citados.) Usted puede desear preguntarle al otro lado sobre hechos o incidentes que no pueden ser comprobados con documentos, pero no se sorprenda si las constestaciones que reciba son falsas o enganasas. Si eso sucede, es mejor si usted nadamas pregunta su version de los hechos cuando el juez le pregunte si tiene algo mas que decir, en lugar de tratar de cambiar el cuento de el otro lado por medio del interrogatorio.

NO DISCUTA.

Recuerde que usted esta en la audiencia porque hay un desacuerdo sobre los hechos o de el modo en que la ley debe de ser aplicada a esos hechos. Es el trabajo de el juez decidir sobre estos dos asuntos, basado en la evidencia presentada en la audiencia. No hay nada de provecho o beneficio al discutir con el otro lado. Su testimonio le sera mas creible al juez si el o ella ven que usted parece ser una persona razonable y madura en lugar de ser agresivo y de mal genio.

COMENTARIOS PARA CONCLUIR.

Despues de que cada lado haya presentado su testimonio y se les ha dado una oportunidad para hacerle preguntas a el otro lado, el juez usualmente le pregunta a los dos partidos si tienen algo mas que decir antes de que se termine la audiencia. Si hay algo en su lista que usted no cubrio, este es el momento para hacerlo. Pero si ya marco todos los puntos en su lista, asegurese de no repetir. Repetir el mismo testimonio una y otra vez tiene la tendencia de hacerlo menos persuasivo.

Es raramente necesario o provechoso hacer una declaracion despues de una audiencia. Pero, si usted tiene el deseo de hacer comentarios generalmente sobre la audiencia asegurese que estos comentarios sean breves y que sean relativos a la evidencia presentada. Comentarios sobre las razones que usted piensa le dan derecho a beneficios o de que usted cree que el otro lado no a dicho la verdad no son provechosos. Es el trabajo del juez decidir esos puntos y como todo mundo, a el o ella no le gustara que otra persona le diga como hacer su trabajo.

Cuando el juez diga que la audiencia ha terminado, dele las gracias y despidaese. No haga comentarios con el juez ni con el otro lado despues de que la audiencia haya terminado. No le pregunte al juez como el o ella va a decidir su caso. De vez en cuando un juez indicara al fin de la audiencia lo que su decision va a ser. Pero esto es raro y no debe de ser esperado. En casi todos los casos, usted no se enterara sobre la decision del juez hasta que le manden la respuesta por correo.

SIGA HACIENDO FORMAS DE RECLAMACION CONTINUA DESPUES DE LA AUDIENCIA.

Recuerde, aunque el juez decida en favor suyo, usted recibira beneficios solamente por las semanas en que usted este desempleado y buscando trabajo. Esto quiere decir que mientras usted espere la decision del juez usted tiene que seguir buscando trabajo mandando reclamaciones continuas por correo cada dos semanas.

CUANDO USTED RECIBA LA DECISION.

Unos jueces mandan por correo sus decisiones unos cuantos dias despues de la audiencia. Otros pueden tomar un mes o mas. Si usted no ha recibido la decision despues de cinco o seis semanas, llame a la oficina del Consejo de Apelaciones al Seguro de Desempleo donde usted tuvo su audiencia y pregunteles si el juez ya hizo la decision.

Si se cambia de domicilio despues de la audiencia, es importante que usted de su nuevo domicilio a la oficina del Consejo de Apelaciones. Si usted no quedo contento con la decision, tendra solo veinte dias para hacer una apelacion y no puede contar en que la decision le llegue a tiempo por medio del correo.

CUANDO USTED RECIBA SUS CHEQUES.

Si usted recibe una decision favorable y ha continuado buscando trabajo y sometiendo formas de reclamacion, usted debe de empesar a recibir un cheque de beneficio semanal y cheques retroactivos automaticamente. Pero, para recibir sus cheques lo mas pronto posible, usted debe de llevar una copia de su decision a la oficina de desempleo (EDD) en cuanto usted

ya reciba y pidales que le ayuden a conseguir sus cheques. Si usted hace esto, no pasaran mas de una o dos semanas para que empiezen a llegarle sus cheques.

QUE HACER SI NO QUEDA CONTENTO CON LA DECISION DE EL JUEZ.

Cada lado tiene veinte dias para hacer una apelacion sobre una decision desfavorable a la oficina del Consejo de Apelacion de Seguro de Desempleo de California. Si el dia veinte cae en Sabado, Domingo o en dia de fiesta, usted tiene hasta el proximo dia de negociar regular.

Usted puede obtener una forma para hacer una apelacion en cualquier oficina de Desempleo (EDD). La apelacion se puede hacer en cualquier oficina de EDD o se puede mandar directamente por correo a el California Insurance Appeals Board, 714 "P" Street, Sacramento, California 95814. Aunque la forma de apelacion le pide que de sus razones para la apelacion, usted no tiene que dar argumentos detallados. Debe de pedir una copia de los transcriptos de la audiencia que el Consejo de Apelaciones le mandara gratis. Cuando usted mande la apelacion y pida los transcriptos, es buena idea buscar la ayuda de un abogado o un asistente legal que conoce las leyes sobre los beneficios del seguro de

desempleo para ayudarlo a preparar un argumento escrito que respalde su apelacion.

El Consejo de Apelaciones le mandara una carta cuando reciba su apelacion. Esta carta le dira a usted que tiene diez dias para pedir una oportunidad de mandarle el Consejo de Apelaciones nueva evidencia o un argumento escrito si usted lo desea.

Si usted recibe una decision favorable y el partido opuesto hace una apelacion, usted sera notificado sobre este hecho. Una apelacion hecha por el departamento o un patron no impedira que usted reciba sus beneficios. Pero, si la apelacion tiene exito sus beneficios pueden ser terminados. Por eso es recomendable que usted pida una copia de los transcriptos cuando el otro partido ha hecho una apelacion. Usted tambien debe de hablar con un abogado o asistente legal si esto sucede. Si su reclamacion es rechazada por el Consejo de Apelaciones al Seguro de Desempleo, usted tiene seis meses para hacer una demanda recusando esa decision en el tribunal Superior del Condado en que usted vive. Usted necesitara los servicios de un abogado para hacer este tipo de demanda. Sera importante que reciba asistencia legal cuanto antes porque el tiempo de seis meses no puede ser extendido.

ANEXO A: NOTICIA DE DETERMINACION

STATE OF CALIFORNIA
EMPLOYMENT DEVELOPMENT DEPARTMENT
NOTICE OF DETERMINATION / RULING
SEA NUMBER 14 16 600

DATE MAILED 03/27/87
BENEFIT YEAR BEGAN 03/01/87

P BARTO
261 7TH AVE
LOS ANGELES

1688
CA 90018

EDD FIELD OFFICE: 1688
AVALON SERVICE CENTER
161 WEST VENICE BLVD
LOS ANGELES CA900153533
TELEPHONE: (213) 744-2660

YOU ARE NOT ELIGIBLE TO RECEIVE BENEFITS UNDER CALIFORNIA UNEMPLOYMENT INSURANCE CODE SECTION 1256 BEGINNING 03/01/87 AND CONTINUING UNTIL YOU RETURN TO WORK AFTER THE DISQUALIFYING ACT AND EARN \$830 OR MORE IN BONA FIDE EMPLOYMENT, AND REOPEN YOUR CLAIM.

YOU WERE DISCHARGED FOR YOUR UNAUTHORIZED POSSESSION OF PROPERTY BELONGING TO YOUR EMPLOYER. THEREFORE IT MUST BE HELD THAT YOU WERE DISCHARGED FOR ACTIONS WHICH INJURED, OR TENDED TO INJURE YOUR EMPLOYER'S INTERESTS. SECTION 1256 PROVIDES - AN INDIVIDUAL IS DISQUALIFIED IF THE DEPARTMENT FINES HE VOLUNTARILY QUIT HIS MOST RECENT WORK WITHOUT GOOD CAUSE OR WAS DISCHARGED FOR MISCONDUCT FROM HIS MOST RECENT WORK. SECTION 1258A PROVIDES - AN INDIVIDUAL DISQUALIFIED UNDER SECTION 1256 IS NOT ELIGIBLE FOR BENEFITS UNTIL HE HAS AGAIN WORKED IN BONA FIDE EMPLOYMENT AND EARNED FIVE TIMES HIS WEEKLY BENEFIT AMOUNT.

IF YOU HAVE REASON TO BELIEVE THAT YOU MAY APPEAL IT, YOU MAY

COMPLETE ITEMS 1 THROUGH 7 ONLY. DO NOT COMPLETE ITEMS BELOW HEAVY BLACK LINE.
THERE ARE THREE CARRIERS ON THIS FORM. PLEASE USE PENCIL OR INK PRINT PER BUSINESS HAND.

STATE OF CALIFORNIA
UNEMPLOYMENT INSURANCE APPEALS BOARD

APPEAL

Office of Appeals Case No. 555-33-111
To be left blank
Second Security Answer Number

(213) 456-7890
Telephone Number

In the Matter of the Claim for Benefits of:

JUAN GARCIA
123 MAIN STREET
LOS ANGELES, CA 90012

2. The undersigned hereby appeals to the Office of Appeals from a determination, ruling or notice of overpayment dated 3-5

1987 for the reasons below. Give complete grounds or reasons for appeal.

I DISAGREE WITH THE UNEMPLOYMENT
DEPARTMENT. I WANT A HEARING
WITH A JUDGE.

Leave additional space if more space is required

3a. Can you speak English? Yes No

If no, give language: SPANISH Dialect: _____

TO EDD: PLEASE VERIFY IF ANY PARTY NEEDS AN INTERPRETER.

4. Signature of Appellant or Agent Juan Garcia 5. Date signed 3-12-87

Leave this space blank, don't sign here
While an appeal is pending, the claimant must continue to file a weekly claim in the local office for each week that he contends he is eligible. If the final decision holds him eligible, he can be paid only for weeks for which he has filed a regular weekly claim and met all other tests of eligibility. An individual claiming benefits can authorize an attorney or any other agent to represent such claimant in an appeals proceeding. (Show in item 7 below.)

7. For Appeals Filed by an Attorney or Other Agent or to Designate
One

6. Employer Appeal Claimant Appeal

Name of Employer

Name and title/relationship of agent

Number _____ Street _____

If representative organization, name _____

City _____ State _____ Zip _____

Street _____

Area Code _____

Zip _____

Section 1328 of the code requires service of the notice, which two days should be explained in my Employment Development Department

TYPE OF APPEAL	
Unemployment	All Joint Claims
Un. claims only	
Un. claims plus rating	
Rating only - Not less than	
OTHER	
Cali-ED	
Fed-ED	
Emp. Assessor No.	DA
State plan decisions	
Vol. plan decisions	
Vol. plan No.	
Federal Programs	
UCIE or UI	
UCX only	

Respondent (Area Code)

City _____

State _____

Zip _____

SEE DE 1000 Rev. 31-111-064

CONTINUED CLAIM EDD USE ONLY
DC week-ending date(s) _____ Initial _____ Date _____
EACH COLUMN IS FOR ONE WEEK ENDING AT MIDNIGHT OF THE DATE SHOWN.
ANSWER EACH QUESTION. For explanation of questions see section in Handbook
entitled "Continued Claim Form". For prompt payment submit immediately after the
week(s) has ended but not later than 14 days from the last week ending date shown.
If extra space is needed, attach additional sheet(s).

ANEXO B:
FORMA DE
APELAMIENTO

Recuerdese: Su
apelación tiene que
estar archivado dentro
de 20 días de la fecha
en la Noticia de De-
terminación o Noticia
de Sobre pago para que
puede ser a tiempo.

Tiene que completar el
porción de arriba de
la forma de apelación
y someterlo al EDD.

EDD USE ONLY

1st Week Ending	2nd Week Ending
4/1/87	4/8/87

NO NO

NONE NONE

YES YES

NO NO

YES YES

NO NO

YES YES

NO NO

NO NO

NO NO

NO NO

NO NO

ANEXO C: RECLAMACION CONTINUA

CALIFORNIA EMPLOYMENT INSURANCE APPEALS BOARD
NOTICE OF HEARING

CASE NO : ING- - 197 -0001-
CLAIMANT : JESSE BLACK
APPELLANT 1102 BROADWAY
LOS ANGELES CA 90061

CL REP: NONE

ADMIN. LAK JUDGE: JUDY FOLSO

SSA NO: 66-48-585

ER REP: NONE

EMPLOYER :

* DATE&TIME: TUESDAY , FEBRUARY 24, 1987 AT 11:15 AM
* PLACE : 12700 S. AVALON BLVD LOS ANGELES CA
* NOTE : REPORT TO APPEALS WAITING SECTION

IMPORTANT-ARRIVE TEN MINUTES EARLY; BE PROMPT; THE TIME WILL BE NECESSARY
FOR YOU TO EXAMINE DEPT. CLAIM AND INTERVIEW RECORDS. Bring to the hearing
any witnesses, medical statements, employment records and other evidence.
Failure by appellant to attend may result in appeal dismissal.

ISSUES ARE:(Section references are in the Un. Ins. Code unless otherwise noted.)

DETER

* PLEASE BRING YOUR COPY OF THE DETERMINATION TO
* THE HEARING FOR USE OF THE ADMINISTRATIVE LAW
* JUDGE.

DIRECT INQUIRIES TO:
INGLEWOOD OFFICE OF APPEALS
1 MANCHESTER BLVD., 4TH FLOOR
INGLEWOOD, CA 90301-1750
PHONE: (213) 412-6143

DATE MAILED: 2/ 3/87

SEE "APPEAL INFORMATION" ENCLOSED

ANEXO E: SUBPENA (FRENTE)

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of:

John E. Doe

153 So. Vermont Ave.
Los Angeles, CA 90004 SUBPENA SUBPENA DUCE TECUM

(Substitution of process, etc.)

LA-30612 Office of Appeals Case No.

The People of the State of California Send Greetings To:

Otis Z. Ham

1560 Main St., Los Angeles, CA 90016

WE COMMAND YOU, that all and singular business and excuses being set aside, you appear before an Administrative Law Judge of the California Unemployment Insurance Appeals Board on

Date and time July 27, 1979 at 11:00 a.m.

Place 8855 East Valley Blvd.

Rosemead, CA 91062

then and there to testify in the above-entitled pending matter; and that you bring with you and there produce the following named documents now in your custody or under your control, to wit:

None

(If witness fails, type "None")

This subpoena is authorized by Sections 407 and 1853 of the California Unemployment Insurance Code. Obedience to subpoenas issued under this Code may be enforced by application to the Superior Court as set forth in Article 2, Chapter 2, Part 1 of Division 3 of Title 2 of the Government Code.

Given under my hand this 10 day of July, 1979

/s/ Charles Walsh

Administrative Law Judge

Los Angeles Office of Appeals

SEE INSTRUCTIONS AND DECLARATION OF SERVICE ON BACK

DE 1946 REV. 12-19-77

NAME OF PERSON SERVED

DATE OF SERVICE

TIME

Otis Z. Ham

7/11/79 Yes

\$12.00 \$100.00 \$22.00

I declare under penalty of perjury that the foregoing
is true and correct.

Date: July 11, 1979

John E. Doe
153 So. Vermont Ave.
Los Angeles - CA 90004

TO BE FILLED OUT BY A WITNESS CLAIMING FEES

I attended the hearing in Case No. _____ either pursuant to the subpoena herein or voluntarily in view of being subpoenaed, and request payment of:

- (a) Witness Fee at \$12.00 per day for _____ day(s)
- (b) Mileage Fee, for miles actually traveled to the place of hearing, one-way,
miles at \$0.20 per mile

TOTAL FEES

Name of Witness
(Please Print)

Street Address

City _____ ZIP _____

Approved:

Law Office, CULAS

SUBPENA (REVERSO)



Unemployment Benefits: How to File Your Own Appeal

EMPLOYMENT LAW OFFICE of the Legal Aid Foundation of Los Angeles
and the LABOR DEFENSE NETWORK — Telephone: (213) 389-3581

WHAT IS AN APPEAL?

You have the right to appeal if the Employment Development Department ("E.D.D." or "unemployment office") has sent you a Notice of Determination denying your application for unemployment benefits; or has sent you a Notice of Overpayment requesting that you pay back money you already received; or taken some other action against you.

The appeal must be in writing. EDD provides a form called an "APPEAL" form which you can get from any EDD office. (See sample Appeal form on the back of this sheet. To complete the Appeal form, follow the instructions on the sample form. If the Appeal form is too difficult to fill out, go to your local EDD office and ask for help from an EDD worker.)

When you get the Appeal form, you should also ask for a Continued Claim form, which you must turn in regularly until a final decision is made in your case.

WHAT ARE THE TIME LIMITS?

If you want to appeal, you must do so before the deadline. Usually, the deadline for the Appeal is 20 days from the date which appears on your Notice of Determination or of Overpayment. (There may be other time limits which are different. Be sure to check all notices for the correct deadlines.)

If you are not sure of the time limit, file your appeal immediately. If you miss the deadline for some reason, don't give up. File your appeal anyway and ask at the hearing that your late filing be excused.

WHERE AND HOW CAN I FILE MY APPEAL?

You should file your appeal at the same local EDD office where you filed your

application for benefits. You can file your appeal in person or by mail. If you mail your appeal, the postmark date on the envelope is the date of your appeal. When filing by mail, it is best to send your appeal by certified mail with a return receipt requested.

WHAT HAPPENS NEXT?

EDD will mail you written Notice of Hearing on which the date, time and location of your hearing will be written.

Other informational materials that explain later steps in the appeal process can be obtained from:

**LABOR DEFENSE NETWORK /
EMPLOYMENT LAW OFFICE (LAFLA)
1636 West Eighth Street, Suite 313
Los Angeles, CA 90017**

The following is a partial listing of E.D.D. offices in the Los Angeles area:

**1405 South Broadway
Downtown Los Angeles
(213) 744-2244**

**923 North Bonnie Beach Place
East Los Angeles
(213) 269-0271**

**1116 North McCadden Place
Hollywood
(213) 856-3600**

**430 Broadway
Santa Monica
(213) 451-9811**

**12700 South Avalon Boulevard
South Central Los Angeles
(213) 744-2948**

**4540 West Century Boulevard
Inglewood
(213) 412-6100**

**10829 West Venice Boulevard
Culver City / West L.A.
(213) 837-0181**

Items 1 through 6 of the Appeal form must be completed. For item 3, the reason given in the sample is adequate.

STATE OF CALIFORNIA
UNEMPLOYMENT INSURANCE APPEALS BOARD

APPEAL

Office of Appeals Case No. _____
To be left blank

555-11-1234
Social Security Account Number

(213) 555-0000
(Telephone Number)

In the Matter of the Claim for Benefits of:

1. JIMMY CARTER
Claimant's Name
2. 1234 S. MAIN ST.
Number Street
CITY LOS ANGELES, CA 90000
State Zip

3. The undersigned hereby appeals to the Office of Appeals from a determination, ruling or notice of overpayment dated 1987

for the reasons below. Give complete grounds or reasons for appeal.
I DO NOT AGREE WITH THE UNEMPLOYMENT
DEPARTMENT. I WANT A HEARING WITH A
JUDGE.

(Attach additional sheet if more space is required)

3a. Can you speak English? Yes No

Dialect: _____

If no, give language: _____

TO EDD: PLEASE VERIFY IF ANY PARTY NEEDS AN INTERPRETER.
(Agent filing appeal, also fill out Item 7.) Jimmy Carter Date signed JAN. 10, 1987

4. Signature of Appellant or Agent
While an appeal is pending, the claimant must continue to file a weekly claim in the local office for each week that he contends he is eligible. If the final decision holds him eligible, he can be paid only for weeks for which he has filed a regular weekly claim and met all other tests of eligibility. An individual claiming benefits can authorize an attorney or any other agent to represent such claimant in an appeals proceeding. (Show in item 7 below.)

7. For Appeals Filed by an Attorney or Other Agent or to Designate
One:
Name and title/relationship of agent _____
If representative organization, name _____
Number _____ Street _____
City _____ State _____ Zip _____

6. Employer Appeal Claimant Appeal
FLY-BY-NIGHT ZIPPER CO.
Firm name of Employer
888 W. 8TH ST.
Number Street
CITY LOS ANGELES, CA 90001
State Zip
(213) 555-9999
(Area Code) (Telephone Number)

TYPE OF APPEAL

- | | |
|-------------------------------|--------------------------|
| UI Including All Joint Claims | <input type="checkbox"/> |
| Bon. determin. only | <input type="checkbox"/> |
| Bon. determin. plus ruling | <input type="checkbox"/> |
| Ruling only—Not less fr. | <input type="checkbox"/> |
| OTHER | <input type="checkbox"/> |
| Cal-ED | <input type="checkbox"/> |
| Fed-ED | <input type="checkbox"/> |
| Emp. Account No. <u>DI</u> | <input type="checkbox"/> |
| State plan determin. | <input type="checkbox"/> |
| Vol. plan determin. | <input type="checkbox"/> |
| Vol. plan No. | <input type="checkbox"/> |
| Federal Programs | <input type="checkbox"/> |
| UCFE no UI | <input type="checkbox"/> |
| UCX only | <input type="checkbox"/> |

Respondent _____
(Area Code) (Telephone Number)
Name _____
Address-Number _____ Street _____
City _____ State _____ Zip _____

Other _____
(Area Code) (Telephone Number)
Name _____
Address-Number _____ Street _____
City _____ State _____ Zip _____

SEE IMPORTANT INFORMATION CONCERNING APPEALS ON REVERSE SIDE OF THIS FORM
DE 1000 Rev. 31 (11-85) STATE OF CALIFORNIA—HEALTH AND WELFARE AGENCY—EMPLOYMENT DEVELOPMENT DEPARTMENT

85 34900



Beneficios de Seguro de Desempleo Como Archivar su Apelacion

How to File Your Own Appeal

EMPLOYMENT LAW OFFICE of the Legal Aid Foundation of Los Angeles
and the LABOR DEFENSE NETWORK — Telephone: (213) 389-3581

¿QUE ES UNA APELACION?

Usted tiene el derecho de apelar si su oficina local del Departamento de Desarrollo de Desempleo (E.D.D.) ha hecho lo siguiente:

- negado su aplicacion para beneficios de desempleo;
- impuso un sobre pago;
- pide que usted pague el dinero que ya recibio;
- deje de darle cheques; o
- tomado alguna otra accion contra usted.

La apelacion debe ser manuscrita. EDD tiene unas formas llamadas APELACION que usted puede pedirle a su trabajador de reclamacion en cualquier oficina de EDD. (Para su conveniencia, una muestra de la forma de APELACION, siga las instrucciones de la forma de muestra.) Si la forma de APELACION es muy dificil de llenar, vaya a su oficina local de EDD y pidale ayuda a un trabajador de EDD.

Cuando usted adquiere la forma de APELACION, usted tambien debe preguntar por una forma de RECLAMACION CONTINUA. Usted tiene que devolver las formas de RECLAMACION CONTINUA regularmente hasta que la decision final de su caso sea hecha.

LA FECHA LIMITE

Si usted quiere apelar, usted tiene que hacerlo antes de la hora y fecha limite. Si usted esta apelando una decision de EDD que aparece en un papel amarillo, llamado NOTICE OF DETERMINATION entonces usted tiene 20 dias desde la fecha de determinacion. En los ultimos parrafos de esta forma va a decir:

“Cualquier apelacion de esta noticia, para ser con tiempo, tiene que ser archivada en persona o por correo antes de o en (fecha).”

Esta es la ultima fecha para archivar. Si usted no esta seguro de el tiempo limitado, archive su apelacion inmediatamente. Si la fecha de cierre se le pasa por cualquier razon, no se de por vencido. Sin embargo archive su apelacion y pida se le disculpe por la tardanza.

¿COMO Y DONDE PUEDO ARCHIVAR MI APELACION?

Usted deberia archivar su apelacion en la misma oficina local de EDD en donde usted archivo su aplicacion para beneficios. Usted puede archivar su apelacion en persona o por correo. Si usted manda su apelacion por correo, la fecha del sello en el sobre es la fecha de su apelacion.

¿QUE PASA DESPUES?

EDD le va mandar un reconocimiento escrito cuando reciba su apelacion. Despues, usted va recibir una NOTICIA DE AUDENCIA en la cual estaran escritas la fecha, hora y lugar de su audiencia.

Otros materiales informativos que esplican los siguientes pasos de su proceso de apelacion pueden ser obtenidos en:

El Red de Defensa Laboral o
en la Oficina de Ayuda Legal,
1636 West Eighth Street, Suite 313
Los Angeles, California 90017

Lo que sigue es una lista parcial de las oficinas de E.D.D. en Los Angeles:

1405 South Broadway
Downtown Los Angeles
(213) 744-2244

923 North Bonnie Beach Place
East Los Angeles
(213) 269-0271

1116 North McCadden Place
Hollywood
(213) 856-3600

430 Broadway
Santa Monica
(213) 451-9811

12700 South Avalon Boulevard
South Central Los Angeles
(213) 744-2948

4540 West Century Boulevard
Inglewood
(213) 412-6100

10829 West Venice Boulevard
Culver City / West L.A.
(213) 837-0181

In the Matter of the Claim for Benefits of:

1. JIMMY CARTER
2. 1234 S. MAIN ST.
3. LOS ANGELES, CA 90000

Street
City
State
Zip

3. The undersigned hereby appeals to the Office of Appeals from a determination, ruling or notice of overpayment dated JAN. 5, 1987 for the reasons below. Give complete grounds or reasons for appeal.

I DO NOT AGREE WITH THE UNEMPLOYMENT DEPARTMENT. I WANT A HEARING WITH A JUDGE.

3a. Can you speak English? Yes No
If no, give language: _____ Dialect: _____

TO EDD: PLEASE VERIFY IF ANY PARTY NEEDS AN INTERPRETER.
(Agent filing appeal, also fill out item 7.)

4. Signature of Appellant or Agent... Jimmy Carter 5. Date signed JAN. 10, 1987
(Agent filing appeal, also fill out item 7.) While an appeal is pending, the claimant must continue to file a weekly claim in the local office for each week that he contends he is eligible. If the final decision holds him eligible, he can be paid only for weeks for which he has filed a regular weekly claim and met all other tests of eligibility. An individual claiming benefits can authorize an attorney or any other agent to represent such claimant in an appeals proceeding. (Show in item 7 below.)

6. Employer Appeal Claimant Appeal
7. For Appeals Filed by an Attorney or Other Agent or to Designate One:
Name and title/relationship of agent _____
If representative organization, name _____
Number _____ Street _____
City _____ State _____ Zip _____

6. Employer Appeal Claimant Appeal
FLY-BY-NIGHT ZIPPER CO.
Firm name of Employer
888 W. 8TH ST.
Number _____ Street _____
Los Angeles, CA 90001
(213) 555-9999
(Telephone Number)
.Area Code)

Section 1328 of the code requires the appeal to be filed by the appellant within twenty (20) calendar days from mailing or personal service of the notice, which twenty-calendar-day period may be extended for good cause. Failure to file within twenty (20) calendar days should be explained in item 3 above. This form should be completed in quadruplicate and mailed to, or filed at, the office of the Employment Development Department from which notice of the determination, ruling or overpayment was mailed or received.

TYPE OF APPEAL	
UI Including All Joint Claims	
Ben. determin. only	<input type="checkbox"/>
Ben. determin. plus ruling	<input type="checkbox"/>
Ruling only-Not last Ex.	<input type="checkbox"/>

FOLLOWING INFORMATION MUST BE COMPLETED BY OFFICE RECEIVING APPEAL
8. Appeal filed at By mail postmarked in person by _____
Office No. _____ (Name of person delivering appeal) on _____
Department representative _____
19 _____ (Attach envelope)



Como Archivar un Reclamo con el Comisionado Laboral

EMPLOYMENT LAW OFFICE of the Legal Aid Foundation of Los Angeles
and the LABOR DEFENSE NETWORK — Telephone: (213) 389-3581

Este paquete contiene informacion sobre como archivar un reclamo por sueldos no pagados con el Comisionado Laboral del Estado. Si usted sigue las instrucciones en este paquete, usted podra completar su propio reclamo.

Si tiene problemas en completar cualquier forma en este paquete, sientase con la libertad de regresar a la clinica del Red De Defensa Laboral.

1. LLENANDO Y ARCHIVANDO SU FORMA DE RECLAMACION

El primer paso es llenar la forma "Reporte o Reclamo Inicial" (Adjunto "A"). Si usted no tiene toda la informacion que necesita para completar su forma de reclamo, usted debe obtener esa informacion lo mas pronto posible y terminar de llenar la forma.

Cuando su forma de reclamo este completa, llevela o mandela a la oficina del Comisionado Laboral que se encuentra en el area donde usted trabajaba. No le van a dar una copia de su forma de reclamo, y por eso usted debe hacer una copia para sus records personales antes de ir a la oficina del Comisionado Laboral. Una lista de todas las oficinas del Comisionado Laboral estan adjuntas a estas instrucciones (Adjunto "B").

Si usted va a la oficina del Comisionado Laboral usted primeramente debe ir al la ventanilla de quejas. Si usted no habla Ingles, pida que le traduzcan.

Dele su forma de reclamo a la persona en la ventanilla de quejas. Esa persona le hara preguntas sobre su caso y preparara otra forma, llamada "Queja" (Vea Adjunto "C"). Entonces le van a pedir que firme su forma de reclamo y la Queja.

No se le cobrara dinero por archivar con el Comisionado Laboral.

2. AVISO QUE SU RECLAMO HA SIDO ARCHIVADO

El Comisionado Laboral debe decirle a su empleador que usted ha archivado un reclamo por sueldos no pagados. Le mandaran una carta de "Noticia de Reclamo Archivado" (Vea Adjunto "D") a su empleador. Le mandaran una copia de esta carta al mismo tiempo que se la manden a su empleador.

En esta carta el Comisionado Laboral indicara porque el cree que su empleador le debe dinero. Usted debe leer esta parte de la carta cuidadosamente. Si usted cree que el Comisionado Laboral ha decidido su caso correctamente, usted simplemente debe guardar su carta con el resto de papeles personales. Si usted cree que el Comisionado Laboral ha hecho un error en decidir su caso, usted debe escribirle al Comisionado Laboral inmediatamente. Si usted quiere ayuda para escribir esta carta, usted puede regresar a la clinica del Red De Defensa Laboral.

3. RESPUESTA DE SU EMPLEADOR

Su empleador debe contestar a la carta del Comisionado Laboral dentro del tiempo limitado que se indica en la carta. El Comisionado Laboral le dira si su empleador ha mandado respuesta a la carta. Si su empleador le manda al Comisionado Laboral un cheque por el dinero que le debe, el Comisionado Laboral le mandara el dinero a usted.

Si su empleador se niega a pagarle, el Comisionado Laboral le mandara una carta indicando porque su empleador cree que usted no tiene un reclamo fuerte. Usted DEBE mandar una respuesta a esta carta, dentro de diez dias. En esta carta, usted debe explicar por que su empleador esta equivocado. Este seguro de mencionar cualquier evidencia que usted tenga que soporte su reclamo. Por ejemplo, si usted guardava sus talones de cheque o un record de las horas que trabajaba, mencionelo en su carta.

Si usted no le escribe al Comisionado Laboral explicando porque su empleador esta equivocado, puede ser que cierren su caso y que el Comisionado Laboral no lo ayude en conseguir su dinero (Vea Adjunto "E" para un ejemplo de este tipo de carta). Si usted necesita ayuda en escribir su carta al Comisionado Laboral, usted puede venir a la clinica

4. CONFERENCIA ENTRE USTED Y SU EMPLEADOR

Si su empleador se niega a pagarle, el Comisionado Laboral quizas decida citar una "conferencia informal" o una "conferencia pre-audiencia." El proposito de estos dos tipos de conferencias es para tratar de llegar a un acuerdo. Se les pedira que atiendan esta conferencia, y los dos recibirán una "Noticia de Conferencia Informal o Pre-Audiencia" (Vea Adjunto "F") que indicara la fecha, hora y lugar de la conferencia.

Usted debe venir a la clinica inmediatamente despues de recibir esa noticia, para que nosotros le puedamos ayudar a prepararse para su conferencia.

Despues de la conferencia el Diputado Comisionado Laboral que esta atendiendo su caso puede recomendar (a) que su empleador le pague, o (b) que su caso se cierre porque usted no tiene un reclamo fuerte. El Diputado Comisionado Laboral tambien puede recomendar que no se haga una decision en su caso hasta que se tome a cabo la audiencia.

5. AVISO DE SU AUDIENCIA

Si una audiencia es necesaria, el Comisionado Laboral le mandara una carta a usted y a su empleador avisandoles que se llevara acabo en cinco o seis meses.

Ocho o diez semanas antes de su audiencia usted recibira una "Noticia de Audiencia" (Vea Adjunto "G"). La noticia le dira la fecha hora y citio donde se llevara acabo.

Usted debe venir a la clinica lo mas pronto posible para que nosotros le ayudemos a prepararlo para su audiencia.

6. LA DECISION DEL COMISIONADO LABORAL

El Comisionado Laboral tomara su

decision sobre su caso dentro de aproximadamente diez a quince dias despues de la audiencia. Usted recibira una copia de la "Decision, Orden o Premio del Comisionado Laboral" (Vea Adjunto "H") por correo certificado.

7. APELANDO LA DECISION DEL COMISIONADO LABORAL

Si usted no queda contento con la decision del Comisionado Laboral usted puede apelar. Su empleador tambien puede hacer esto, si el o ella no esta contento con la decision.

Si usted decide archivar una apelacion, usted DEBE hacerlo dentro de diez dias despues de recibir la "Decision, Order o Premio," y usted debe usar la forma especial (Vea Adjunto I).

Usted puede venir a la clinica si necesita ayuda en llenar la forma de apelacion.

RECUERDESE

El Comisionado Laboral se pondra en contacto con usted solo por correo. Por eso es muy importante que usted le avise a la oficina de el Comisionado Laboral si cambia de direccion.

Siempre que venga a la clinica en busca de ayuda usted debe acordarse de traer todos sus papeles que usted crea que se necesiten, como sus talones de cheques y cartas que usted ha recibido del Comisionado Laboral.

\ws\comision

DIVISION DE ENFORZAMIENTO DE NORMAS LABORALES
COMISARIO DE LABOR DEL ESTADO

REPORTE INICIAL
O RECLAMO

PORFAVOR ESCRIBA A MOLDE TODA INFORMACION

TAKEN BY	PROCEEDING NUMBER			ACTION
DATE TAKEN	PROGRAM	SOURCE	IND. CODE	
	DO	BOFE	1	2
FIELD INVESTIGATION REFERRAL				
REFERRING OFFICE			DATE	

SU NOMBRE		NO. DE SEGURO SOCIAL	NO. DE EXONERADOS DE IMPUESTOS:	
SU DIRECCION — NO. Y CALLE, APARTAMENTO O NO. DE ESPACIO, CIUDAD, ZONA POSTAL		TELEFONO — CASA	TELEFONO — TRABAJO	
CLASE DE TRABAJO QUE HACE (OFICIO)	FECHA DE EMPLEO	NO. DE SU LICENCIA DE MANEJAR DE CALIF.	FECHA DE NACIMIENTO	
TRABAJO HECHO EN — NO. Y CALLE, CIUDAD, CONDADO, ZONA POSTAL		PROYECTO DE OBRAS PUBLICAS?	SU EMPLEO ERA DE UNION?	
		<input type="checkbox"/> SI <input type="checkbox"/> NO	<input type="checkbox"/> SI <input type="checkbox"/> NO	

EN CONTRA

NOMBRE DEL NEGOCIO	NOMBRE DEL PATRON	<input type="checkbox"/> BANCARROTA <input type="checkbox"/> VENDIO EL NEGOCIO <input type="checkbox"/> INSOLVENTE	
DIRECCION DEL NEGOCIO		TELEFONO	
NOMBRE DE PERSONA A CARGO	TIPO DE NEGOCIO	APROX. NO. DE EMPLEADOS:	MENORES EMPLEADOS?
			<input type="checkbox"/> SI <input type="checkbox"/> NO

SUELDO — CONDICIONES DE EMPLEO

TASA DE PAGO — POR HORA, DIA, SEMANA O MES (SPECIFIQUE)	\$	PAGADO POR PIESA?	<input type="checkbox"/> SI <input type="checkbox"/> NO	TRABAJA JORNADAS DE TRABAJO DIVIDIDA EN DOS TURNOS?	<input type="checkbox"/> SI <input type="checkbox"/> NO
TOTAL DE HORAS TRABAJADAS	POR DIA: POR SEMANA:	LE PAGABAN TIEMPO SUPLEMENTARIO?	<input type="checkbox"/> SI <input type="checkbox"/> NO	4 DIAS / 10 HORAS A LA SEMANA?	SI ES QUE SI, ACUERDO POR ESCRITO?
AUN SIGUE TRABAJANDO POR ESTE PATRON?	<input type="checkbox"/> SI <input type="checkbox"/> NO	ABANDONO EN QUE FECHA? DESPIDIERON		SI LO ABANDONO, DIO UD. 72 HORAS DE AVISO?	<input type="checkbox"/> SI <input type="checkbox"/> NO
HA SOLICITADO SU SUELDO?	<input type="checkbox"/> SI <input type="checkbox"/> NO	SI ES QUE SI, EN QUE FECHA?		LE COBRARON POR DEFICITS?	REGISTRO DE HORAS TRABAJADAS QUE TENGA CONSERVADAS?
COMO LE PAGABAN?	<input type="checkbox"/> CON CHEQUE <input type="checkbox"/> EN EFECTIVO	LE DIERON UN INFORME DE DEDUCCION?	<input type="checkbox"/> SI <input type="checkbox"/> NO	UNIFORME / HERRAMIENTA REQUERIDA?	SI ES QUE SI, PROPORCIONADA POR EL PATRON?
PERIODO DE COMIDA:	<input type="checkbox"/> MIENTRAS TRABAJA <input type="checkbox"/> FUERA DE TRABAJO	COMIDAS PROPORCIONADAS?	<input type="checkbox"/> SI <input type="checkbox"/> NO	SI ES QUE SI, ACUERDO POR ESCRITO?	<input type="checkbox"/> SI <input type="checkbox"/> NO
ALOJAMIENTO PROPORCIONADO:	<input type="checkbox"/> HABITACION INDIVIDUAL <input type="checkbox"/> HABITACION COMPARTIDA	APARTAMENTO		COMIDAS PROPORCIONADAS:	DESAYUNO <input type="checkbox"/> ALMUERZO <input type="checkbox"/> COMIDA
VALOR DE RENTA DEL APT. AL PUBLICO	\$	VALOR DE RENTA DEL APT. AL PUBLICO			ADELANTOS EN EFECTIVO (SI ALGUNO)

GANANCIAS EN BRUTO RECLAMADAS (No Descuento Impuestos De Nomina De Pago)

DE (FECHA)	A (FECHA)	NUMERO DE HORAS, DIAS, SEMANAS O MESES RECLAMADOS (SPECIFIQUE)	
19	19		
AL PAGO DE — POR HORA, DIA, SEMANA O MES (SPECIFIQUE)		SUB-TOTAL →	\$
\$		MENOS EL TOTAL DE DINERO EN EFECTIVO O CREDITOS RECIBIDOS →	\$

BREVE EXPLICACION DE LOS ASUNTOS (Use Papel Adicional Si Es Necesario)

.....
.....
.....
.....
.....

CANTIDAD PAGADERA O BALANCE RECLAMADO →	\$
---	----

YO POR LA PRESENTE CERTIFICO, Que esta es una declaracion verdadera segun mi conocimiento y creencia. Al menos que una accion se lleve acabo en este reclamo de acuerdo con la Seccion 98 delCodigo de Labor, yo asingo todo sueldo y toda multa acumulandose por falta de pago, y todo embargo protegiendoles, al Comisario de Labor del Estado de California a que colecte de acuerdo con la ley.

MI NOMBRE SE PUEDE USAR EN CUALQUIER INVESTIGACION. SI NO

(Firma)

Direccion Fecha

¡O ESCRIBA POR ESTE LADO



Where to File Wage Claims

EMPLOYMENT LAW OFFICE of the Legal Aid Foundation of Los Angeles
and the LABOR DEFENSE NETWORK — Telephone: (213) 389-3581

LABOR COMMISSIONER'S OFFICES [State] (a partial listing)

- | | |
|--|---|
| [] 107 S. Broadway, #5015
Los Angeles
213-620-5130 | [] 107 S. Broadway, #5025
Los Angeles, CA
213-620-2831 |
| [] 6430 Sunset Blvd., #301
Hollywood
213-736-3161 | [] 1 Manchester Blvd., #604
Inglewood
213-674-6522 |
| [] 4310 Long Beach Blvd.
Long Beach
213-428-7491 | [] 13215 East Penn St., #300
Whittier
213-698-2278 |
| [] 8155 Van Nuys Bl., #950
Panorama City
818-782-3733 | [] 300 South Park Ave., #830
Pomona
714-623-4306 |

U.S. DEPARTMENT OF LABOR [Federal]

- [] Wage & Hour Division
3660 Wilshire Blvd.
Los Angeles
213-894-4972

SMALL CLAIMS COURT (MUNICIPAL COURT), LOS ANGELES DISTRICT

- [] 110 North Grand Avenue, Room 429
Los Angeles, CA 90012
Open: 8:30 a.m. - 4:30 p.m.; night court at 5:30 p.m. on
Mondays or on Tuesdays when Monday is a holiday.)
213-974-6131 (taped message, except 2:30 - 4:30 p.m.)
- [] Small Claims Court Advisor
Department of Consumer Affairs
213-974-9759

[See phone directory for Small
Claims Courts in other cities.]

LABOR COMMISSIONER, STATE OF CALIFORNIA
Department of Industrial Relations
Division of Labor Standards Enforcement

PLAINTIFF

[Redacted]
[Redacted]
[Redacted]

DEFENDANT

[Redacted]
[Redacted]
[Redacted]

STATE CASE NUMBER

NOTICE OF CLAIM FILED



The State Labor Code requires immediate payment of wages conceded to be due, and provides for additional wages accrued pursuant to Labor Code Section 203 as a penalty for non-payment of wages within statutory time limits. A claim has been filed with this Division by the plaintiff shown above, alleging non-payment of:

and also alleging additional wages accrued pursuant to Labor Code Section 203 as a penalty at the rate of \$ _____ per day for an indeterminate number of days not to exceed thirty days.

In addition, you may be subject to penalties due to the State of California, which may be assessed pursuant to Labor Code Section 210.

You may settle this claim by mailing to this office immediately a check or money order made payable to the Labor Commissioner. Should you dispute this claim, submit a written statement *IN DUPLICATE* of the facts and include payment of any amount conceded to be due. Explain why payment of wages due was not made in the required timely manner. Payment must be accompanied by a separate or detachable itemized statement of any deduction made as provided by the Labor Code. Do not make payroll deductions from amounts paid as penalties.

We must request a written reply, in duplicate, to this letter within 10 days from the date below.

If this claim is not settled, it will be resolved as provided by Section _____ of the California Labor Code.

DATED:

Original - DLSE

Deputy Labor Commissioner



NOTICE OF CLAIM FILED

LABOR COMMISSIONER STATE OF CALIFORNIA
Department of Industrial Relations
Division of Labor Standards Enforcement



PLAINTIFF

DEFENDANT

STATE CASE NUMBER

ANSWER

Defendant answers the complaint on file as follows:

AGREES:

DENIES:

(Set forth any particulars in which the complaint is inaccurate or incomplete and the facts upon which you intend to rely. Use additional sheet if necessary.)

Defendant certifies that the foregoing, including attachments, is true and correct to the best of his/her knowledge and belief.

Executed at _____, California, on _____, 19_____.
[Signature space]

(Signature of person answering, with title if answer is made on behalf of another person or entity.)

(Type or print your name and name of person or entity, if any, on whose behalf this form is signed.)

FILE YOUR ANSWER AT:

PLAINTIFF

[Redacted area for Plaintiff's address]

DEFENDANT

[Redacted area for Defendant's address]

STATE CASE NUMBER

NOTICE OF CLAIM FILED AND HEARING

NOTICE! A Hearing will be held before the Labor Commissioner of the State of California as follows:

PLACE:

DATE:

TIME:

or as soon thereafter as the matter can be heard, upon the complaint filed herein, a copy of which complaint is attached and hereby served upon you. This hearing will be held pursuant to Labor Code Sections 98(a) et. seq.

TO THE DEFENDANT:

1. Within 10 days after the service upon you of this Notice, you may file an Answer with the Labor Commissioner at the office shown above. The hearing scheduled in this matter will be conducted regardless of whether you file or submit an Answer.
2. You may be but need not be represented by counsel. If you wish to seek the advice of counsel in this matter you should do so promptly so that your written answer, if any, may be filed on time. You have the right to have a representative present at the hearing. It is not necessary that such representative be an attorney.
3. You will be given the opportunity at the scheduled hearing to present any relevant evidence; present witnesses; and cross-examine witnesses testifying against you. Application for the issuance of subpoenas to compel the attendance of necessary witnesses and the production of books and documents can be made to the Office of the Labor Commissioner. The scheduled hearing in this matter will be held regardless of whether you appear. An order, decision or award will be issued in accordance with the evidence offered at the hearing. A copy of the rules of practice and procedure governing these hearings is available at any district office of the Labor Commissioner.
4. Any wages awarded pursuant to this hearing will accrue interest from the date they were due until they are paid, in accordance with Labor Code Section 98.1(c).
5. This matter can be disposed of without hearing by your remitting in full the amount specified in the Complaint, including the additional wages pursuant to Labor Code Section 203 (if stated in the Complaint), in which event you need not file or submit an Answer.

Dated:

Hearing Officer

NOTICE TO:

: You are served

<input type="checkbox"/> AS AN INDIVIDUAL DEFENDANT	<input type="checkbox"/> AS THE PERSON OPERATING UNDER THE FICTITIOUS NAME OF:	
ON BEHALF OF:		
<input type="checkbox"/>	<input type="checkbox"/> A CORPORATION	<input type="checkbox"/> A PARTNERSHIP OR ASSOCIATION

Original - White - DLSE: Quadruplicate - Yellow - DLSE

DLSE 565 (NEW 8/86)

NOTICE OF CLAIM FILED AND HEARING

L. C. 98



LABOR COMMISSIONER, STATE OF CALIFORNIA
Department of Industrial Relations
Division of Labor Standards Enforcement

FOR COURT USE ONLY

PLAINTIFF

DEFENDANT

STATE CASE NUMBER

COURT NUMBER

ORDER, DECISION OR AWARD OF THE LABOR COMMISSIONER

1. The above-entitled matter came on for hearing before the Labor Commissioner of the State of California as follows:

DATE:

CITY: , California.

2. IT IS ORDERED THAT:

- A. Plaintiff recover from Defendant:

\$ _____ for wages or compensation;

\$ _____ for additional wages accrued pursuant to Labor Code Section 203 as a penalty, *and that same shall not be subject to payroll or other deduction*;

\$ _____ for recovery on dishonored payroll check;

\$ _____ other (specify).

\$ _____ TOTAL AMOUNT OF AWARD

- B. Plaintiff take nothing by virtue of his/her complaint herein.

3. The herein Order, Decision or Award is based upon the Summary of Hearing and Reasons for Decision attached hereto and incorporated herein by reference.

4. The parties herein are notified and advised that this Order, Decision or Award shall become the final Order, Decision or Award of the Labor Commissioner and enforceable as a judgment by an appropriate court within ten (10) days after service upon them unless they exercise their right to appeal to the appropriate court*. In case of appeal the necessary filing fee must be paid by the appellant *and appellant must, immediately upon filing an appeal with the appropriate court, serve a copy of the appeal request upon the Labor Commissioner*. If an appeal is filed by a corporation, present law requires that the corporation must be represented by an Attorney-at-Law, licensed to practice in the State of California during all phases, including the filing of Notice of Appeal. A corporation's failure to be represented by an attorney may be cause for dismissal. Labor Code Section 98.2(b) provides that if the party seeking review by filing an appeal to the court is unsuccessful in such appeal, the court shall determine the costs and reasonable attorney's fees incurred by the other parties to the appeal and assess such amount as a cost upon the party filing the appeal.

LABOR COMMISSIONER, STATE OF CALIFORNIA

By _____

DATED:

Hearing Officer

White - DLSE; Blue - Defendant; Green - Plaintiff.



SUPERIOR COURT OF THE STATE OF CALIFORNIA
 MUNICIPAL COURT OF THE STATE OF CALIFORNIA
 JUSTICE COURT OF THE STATE OF CALIFORNIA

COUNTY OF _____

JUDICIAL DISTRICT _____

PLAINTIFF _____

DEFENDANT _____

COURT NUMBER _____

NOTICE OF APPEAL

NOTICE OF APPEAL of the Order, Decision or Award of the Labor Commissioner in State Case Number _____

dated _____, and served upon the undersigned appellant, _____

on _____, is given and filed pursuant to Labor Code Section 98.2.

Appellant attaches as Exhibit "A" a copy of the Order, Decision or Award appealed and requests that the Clerk of the Court set the cause for hearing before the above-entitled court, where it shall be heard *de novo* in accordance with Labor Code Section 98.2, and that the Clerk of the Court give Notice of time, date and place of the new trial to each of the following parties and the Labor Commissioner's office at the places listed below. Appellant certifies that a copy of this Notice of Appeal has been served upon the Labor Commissioner and a copy has been mailed to the Respondent, as shown below.

APPELLANT (OR ATTORNEY) (NAME, ADDRESS, TELEPHONE NUMBER)

OFFICE OF THE LABOR COMMISSIONER (ADDRESS AND TELEPHONE NUMBER)
 STATE LABOR COMMISSIONER

RESPONDENT (OR ATTORNEY) (NAME, ADDRESS, TELEPHONE NUMBER)

Dated:

State of California
 Department of Industrial Relations
 Division of Labor Standards Enforcement

Signature of Appellant



Beneficios de Seguro de Desempleo Como Archivar su Apelacion

How to File Your Own Appeal

EMPLOYMENT LAW OFFICE of the Legal Aid Foundation of Los Angeles
and the LABOR DEFENSE NETWORK — Telephone: (213) 389-3581

¿QUE ES UNA APELACION?

Usted tiene el derecho de apelar si su oficina local del Departamento de Desarrollo de Desempleo (E.D.D.) ha hecho lo siguiente:

- negado su aplicacion para beneficios de desempleo;
- impuso un sobre pago;
- pide que usted pague el dinero que ya recibio;
- deje de darle cheques; o
- tomado alguna otra accion contra usted.

La apelacion debe ser manuscrita. EDD tiene unas formas llamadas APELACION que usted puede pedirle a su trabajador de reclamacion en cualquier oficina de EDD. (Para su conveniencia, una muestra de la forma de APELACION, - siga las instrucciones de la forma de muestra.) Si la forma de APELACION es muy dificil de llenar, vaya a su oficina local de EDD y pidale ayuda a un trabajador de EDD.

Cuando usted adquiere la forma de APELACION, usted tambien debe preguntar por una forma de RECLAMACION CONTINUA. Usted tiene que devolver las formas de RECLAMACION CONTINUA regularmente hasta que la decision final de su caso sea hecha.

LA FECHA LIMITE

Si usted quiere apelar, usted tiene que hacerlo antes de la hora y fecha limite. Si usted esta apelando una decision de EDD que aparece en un papel amarillo, llamado NOTICE OF DETERMINATION entonces usted tiene 20 dias desde la fecha de determinacion. En los ultimos parrafos de esta forma va a decir:

“Cualquier apelacion de esta noticia, para ser con tiempo, tiene que ser archivada en persona o por correo antes de o en (fecha).”

Esta es la ultima fecha para archivar. Si usted no esta seguro de el tiempo limitado, archive su apelacion inmediatamente. Si la fecha de cierre se le pasa por cualquier razon, no se de por vencido. Sin embargo archive su apelacion y pida se le disculpe por la tardanza.

¿COMO Y DONDE PUEDO ARCHIVAR MI APELACION?

Usted deberia archivar su apelacion en la misma oficina local de EDD en donde usted archivo su aplicacion para beneficios. Usted puede archivar su apelacion en persona o por correo. Si usted manda su apelacion por correo, la fecha del sello en el sobre es la fecha de su apelacion.

¿QUE PASA DESPUES?

EDD le va mandar un reconocimiento escrito cuando reciba su apelacion. Despues, usted va recibir una NOTICIA DE AUDENCIA en la cual estaran escritas la fecha, hora y lugar de su audiencia.

Otros materiales informativos que esplican los siguientes pasos de su proceso de apelacion pueden ser obtenidos en:

El Red de Defensa Laboral o
en la Oficina de Ayuda Legal,
1636 West Eighth Street, Suite 313
Los Angeles, California 90017

Lo que sigue es una lista parcial de las oficinas de E.D.D. en Los Angeles:

**1405 South Broadway
Downtown Los Angeles
(213) 744-2244**

**923 North Bonnie Beach Place
East Los Angeles
(213) 269-0271**

1116 North McCadden Place
Hollywood
(213) 856-3600

430 Broadway
Santa Monica
(213) 451-9811

12700 South Avalon Boulevard
South Central Los Angeles
(213) 744-2948

4540 West Century Boulevard
Inglewood
(213) 412-6100

10829 West Venice Boulevard
Culver City / West L.A.
(213) 837-0181

Numero 1 a 6 de la forma de la
apelacion se deben completar.
Para numero 3, la razon dada
en el ejemplo es adecuada.

STATE OF CALIFORNIA
UNEMPLOYMENT INSURANCE APPEALS BOARD

APPEAL

Office of Appeals Case No. _____
To be left blank

555-11-1234
Social Security Account Number

(213) 555-0000
(Telephone Number)

In the Matter of the Claim for Benefits of:

1. JIMMY CARTER
2. 1234 S. MAIN ST.
3. LOS ANGELES, CA 90000

3. The undersigned hereby appeals to the Office of Appeals from a determination, ruling or notice of overpayment dated JAN. 5, 1987, for the reasons below. Give complete grounds or reasons for appeal.

I DO NOT AGREE WITH THE UNEMPLOYMENT DEPARTMENT. I WANT A HEARING WITH A JUDGE.

3a. Can you speak English? Yes No

Dialect: _____
(Attach additional sheet if more space is required)

TO EDD: PLEASE VERIFY IF ANY PARTY NEEDS AN INTERPRETER.

4. Signature of Appellant or Agent
(Agent filing appeal, also fill out item 7.)

While an appeal is pending, the claimant must continue to file a weekly claim in the local office for each week that he contends he is eligible. If the final decision holds him eligible, he can be paid only for weeks for which he has filed a regular weekly claim and met all other tests of eligibility. An individual claiming benefits can authorize an attorney or any other agent to represent such claimant in an appeals proceeding. (Show in Item 7 below.)

7. For Appeals Filed by an Attorney or Other Agent or to Designate One:

6. Employer Appeal Claimant Appeal
FLY-BY-NIGHT ZIPPER CO.
7. Name of Employer _____
8. Street _____
Number _____ Zip _____
City _____
9. State _____
Area Code _____
(Telephone Number)

Name and title/relationship of agent _____
If representative organization, name _____
Number _____ Street _____
City _____ State _____ Zip _____

(Area Code) _____
(Telephone Number)

Section 1328 of the code requires the appeal to be filed by the appellant within twenty (20) calendar days from mailing or personal service of the notice, which twenty-calendar-day period may be extended for good cause. Failure to file within twenty (20) calendar days should be explained in item 3 above. This form should be completed in quadruplicate and mailed to, or filed at, the office of the Employment Development Department from which notice of the determination, ruling or overpayment was mailed or received.

FOLLOWING INFORMATION MUST BE COMPLETED BY OFFICE RECEIVING APPEAL

TYPE OF APPEAL	
<input type="checkbox"/> UI Including All Joint Claims	<input type="checkbox"/> UI
<input type="checkbox"/> Bon destra. only	<input type="checkbox"/> Bon destra. plus ruling
<input type="checkbox"/> Bon destra. plus ruling	<input type="checkbox"/> Bon destra. plus ruling
<input type="checkbox"/> Pending only-No less than 10 days	<input type="checkbox"/> Pending only-No less than 10 days

8. Appeal filed at _____ By mail postmarked _____, 19_____
(Attach envelope)
in person by _____
(Name of person delivering appeal) _____, 19_____
Office No. _____
Department representative _____



Unemployment Benefits: Discharge for Misconduct

EMPLOYMENT LAW OFFICE of the Legal Aid Foundation of Los Angeles
and the LABOR DEFENSE NETWORK — Telephone: (213) 389-3581

You can get unemployment benefits even if you were fired, so long as you were not fired from your most recent job because of misconduct.

In this section, we will define misconduct, give some common examples and offer suggestions on how to prepare for a hearing when the issue is whether you were fired because of misconduct.

DEFINITION

There is no simple, clear-cut definition of "misconduct." Obvious cases, such as stealing from your employer or starting a fight, are almost always considered misconduct. On the other hand, single instances of minor mistakes or unsatisfactory work are usually not considered misconduct.

In general, misconduct is a serious violation of an important obligation owed to your employer which is done deliberately, or shows a substantial lack of concern for your job duties.

EXAMPLES

Lateness/absences. You have an obligation to report to work regularly and on time. This may be excused if you have a good reason for being late or absent and make an effort to tell your employer that you will be late or absent. Repeated absences of latenesses without a good reason will usually be considered misconduct, especially if you don't call in. One or two absences however, when you have tried to call your employer, will usually not be considered misconduct.

At your hearing you should explain to the judge how often you were late or absent and what you did to let your employer know that you would be late or absent.

Insubordination/disloyalty. You have a duty to follow reasonable rules or requests made by your employer. One violation of a rule will usually not be considered misconduct, unless the rule is a very important one. However, repeated violations of even a minor rule may be considered misconduct if you have received warnings. And, if your employer's request or rule is unreasonable, disobeying the request or rule will not be misconduct.

At your hearing you should explain that you did not refuse to follow your employer's rule or request; or if you did, you should explain why the rule or request was not reasonable or why your failure to follow it was not important.

Intoxication on the job. Being fired for drinking on the job is usually considered misconduct. However, it is not misconduct if medical evidence shows that you are an alcoholic and cannot control your drinking.

If you were not drinking at work, you should be prepared to explain at your hearing why it might have appeared that you were drinking or were intoxicated, even though you weren't.

If you are an alcoholic and you were intoxicated at work, you should bring a statement from your doctor, indicating that you cannot control your drinking. Even if you are able to show that you cannot control your drinking, you may not qualify for unemployment insurance benefits unless you enter a treatment program and are able to return to employment, or other conditions are met.

Relationships with supervisors and co-workers. You do not have to be friendly to everyone at work. On the other hand, you do have a duty to cooperate in a reasonable way with supervisors and co-workers. If there is a lack of cooperation that harms your employer's interests, it may be considered misconduct.

The seriousness or repeated nature of the uncooperative conduct is the key. One argument with a co-worker may not be considered misconduct. However, repeated arguments or fights with co-workers will be misconduct, unless it is clear that the fights or arguments were someone else's fault.

SUMMARY

Remember that at a hearing where your misconduct is an issue your employer must show:

- (1) A serious violation of
- (2) an important obligation that is owed to him or her
- (3) that was either done deliberately, or showed a substantial lack of concern for your job duties.

You can win if you show:

- (1) No violation occurred; or
- (2) if a violation did occur, it was unintentional, or
- (3) it was a single, minor incident.



Beneficios de Seguro de Desempleo Despido por Mala Conducta

UIB: Discharge for Misconduct

EMPLOYMENT LAW OFFICE of the Legal Aid Foundation of Los Angeles
and the LABOR DEFENSE NETWORK — Telephone: (213) 389-3581

Usted puede recibir beneficios de desempleo aunque haya sido despedido, solamente que no haya sido despedido de su trabajo mas reciente por "mala conducta" o "conducta impropia."

En esta sección vamos a definir "mala conducta" y dar ejemplos comunes y ofrecerle sugerencias sobre como prepararse para una audiencia cuando el punto es, si Usted fue despedido por mala conducta.

DEFINICION

No hay una definición tan simple para el término "mala conducta." Robar de su patron o iniciar un pleito son casos obvios que casi siempre son considerados como mala conducta. Por otro lado, instancias solitarias de errores menores o trabajo no satisfecho usualmente no son consideradas como mala conducta.

Por lo general, mala conducta es una violación seria de una obligación importante debida a su patron que es hecha intencionalmente o demuestra bastante falta de interés hacia las obligaciones de su trabajo.

EJEMPLOS

Tardanzas/ausencias. Usted tiene una obligación de reportarse a su trabajo regularmente y a tiempo. Esto puede ser perdonado si Usted tiene una buena razón por su tardanza o ausencia y si ha hecho un esfuerzo para decirle a su patron que llegara tarde o estará ausente. Ausencias o tardanzas repetidas sin buenas razones usualmente serán consideradas como mala conducta, especialmente si usted no llama. Pero una o dos ausencias cuando ha tratado de llamar a su patron, usualmente no serán consideradas como mala conducta.

En su audiencia debe de explicarle a el juez cada vez que usted llegaba tarde o se ausentaba y que fue lo que hizo para informarle a su patron que llegaría tarde o estaría ausente.

Insubordinacion/deslealtad. Usted tiene una obligación de seguir reglas o

peticiones razonables hechas por su patron. La violación de una regla usualmente no será considerada mala conducta, al menos que la regla sea muy importante. Pero violaciones repetidas aunque sean violaciones menores, pueden ser consideradas como mala conducta si usted ha recibido avisos escritos. Si lo que le pide su patron no es razonable, entonces el acto de no obedecer no será mala conducta.

Al tiempo de su audiencia debe de explicar que usted no se negó a seguir la regla o petición de su patron. Si verdaderamente se negó, entonces usted debe de explicar por que la regla o petición de su patron no fue razonable o porque su falla de seguir la regla o petición no fue importante.

Embriaguez en el trabajo. El hecho de ser despedido por haber tomado bebidas alcoholicas en el trabajo usualmente es considerado mala conducta. Pero no es mala conducta si evidencia médica comprueba que usted es alcoholico y no puede controlar su deseo de beber alcohol.

Si usted no estuvo tomando en su trabajo, debe de estar preparado para explicar en su audiencia porque aparentemente que usted estuvo tomando o en estado de embriaguez aunque verdaderamente no estuvo.

Si usted es alcoholico y estuvo borracho en su trabajo, debe de presentar una declaración de su doctor indicando que usted no puede controlar su deseo de beber alcohol.

Relaciones con supervisores y compañeros de trabajo. Usted no tiene que ser amistoso con todas las personas en el trabajo. Pero por otro lado, tiene una obligación de colaborar en una forma razonable con los supervisores y compañeros de trabajo. Si hay una falta de colaboración que daña los intereses de su patron, puede ser considerado mala conducta. Lo importante está en el nivel de seriedad o en la repetición de su falta de colaboración. Una pelea con un compañero de

trabajo quizas no pueda ser considerada como mala conducta. Pero disgustos o peleas con companeros, repetidamente en el trabajo si seran mala conducta al menos que sea claro que los disgustos o peleas fueron la culpa de otros.

RESUMEN

Recuerde que en una audiencia donde su mala conducta es un punto en debate, su patron tiene que comprobar:

- 1) Una violacion por el motivo de,
- 2) Una obligacion importante que le debe a su patron
- 3) Y que fue hecha proporcionalmente o demuestra bastante falta de interes por las obligaciones de su trabajo.

Usted puede ganar si comprueba que:

- 1) No hubo ningun tipo de violacion, o
- 2) Si hubo alguna violacion, que no fue intencional, o
- 3) Que sucedio solamente una vez y fue incidente menor.



Beneficios de Seguro de Desempleo Despido por Mala Conducta

UIB: Discharge for Misconduct

EMPLOYMENT LAW OFFICE of the Legal Aid Foundation of Los Angeles
and the LABOR DEFENSE NETWORK — Telephone: (213) 389-3581

Usted puede recibir beneficios de desempleo aunque haya sido despedido, solamente que no haya sido despedido de su trabajo mas reciente por "mala conducta" o "conducta impropia."

En esta sección vamos a definir "mala conducta" y dar ejemplos comunes y ofrecerle sugerencias sobre como prepararse para una audiencia cuando el punto es, si Usted fue despedido por mala conducta.

DEFINICION

No hay una definición tan simple para el término "mala conducta." Robar de su patron o iniciar un pleito son casos obvios que casi siempre son considerados como mala conducta. Por otro lado, instancias solitarias de errores menores o trabajo no satisfecho usualmente no son consideradas como mala conducta.

Por lo general, mala conducta es una violación seria de una obligación importante debida a su patron que es hecha intencionalmente o demuestra bastante falta de interés hacia las obligaciones de su trabajo.

EJEMPLOS

Tardanzas/ausencias. Usted tiene una obligación de reportarse a su trabajo regularmente y a tiempo. Esto puede ser perdonado si Usted tiene una buena razón por su tardanza o ausencia y si ha hecho un esfuerzo para decirle a su patron que llegara tarde o estará ausente. Ausencias o tardanzas repetidas sin buenas razones usualmente serán consideradas como mala conducta, especialmente si usted no llama. Pero una o dos ausencias cuando ha tratado de llamar a su patron, usualmente no serán consideradas como mala conducta.

En su audiencia debe de explicarle a el juez cada vez que usted llegaba tarde o se ausentaba y que fue lo que hizo para informarle a su patron que llegaría tarde o estaría ausente.

Insubordinacion/deslealtad. Usted tiene una obligación de seguir reglas o

peticiones razonables hechas por su patron. La violación de una regla usualmente no será considerada mala conducta, al menos que la regla sea muy importante. Pero violaciones repetidas aunque sean violaciones menores, pueden ser consideradas como mala conducta si usted ha recibido avisos escritos. Si lo que le pide su patron no es razonable, entonces el acto de no obedecer no será mala conducta.

Al tiempo de su audiencia debe de explicar que usted no se negó a seguir la regla o petición de su patron. Si verdaderamente se negó, entonces usted debe de explicar por que la regla o petición de su patron no fue razonable o porque su falla de seguir la regla o petición no fue importante.

Embriaguez en el trabajo. El hecho de ser despedido por haber tomado bebidas alcohólicas en el trabajo usualmente es considerado mala conducta. Pero no es mala conducta si evidencia médica comprueba que usted es alcohólico y no puede controlar su deseo de beber alcohol.

Si usted no estuvo tomando en su trabajo, debe de estar preparado para explicar en su audiencia porque aparentó que usted estuvo tomando o en estado de embriaguez aunque verdaderamente no estuvo.

Si usted es alcohólico y estuvo borracho en su trabajo, debe de presentar una declaración de su doctor indicando que usted no puede controlar su deseo de beber alcohol.

Relaciones con supervisores y compañeros de trabajo. Usted no tiene que ser amistoso con todas las personas en el trabajo. Pero por otro lado, tiene una obligación de colaborar en una forma razonable con los supervisores y compañeros de trabajo. Si hay una falta de colaboración que dana los intereses de su patron, puede ser considerado mala conducta. Lo importante está en el nivel de seriedad o en la repetición de su falta de colaboración. Una pelea con un compañero de

trabajo quizas no pueda ser considerada como mala conducta. Pero disgustos o peleas con companeros, repetidamente en el trabajo si seran mala conducta al menos que sea claro que los disgustos o peleas fueron la culpa de otros.

RESUMEN

Recuerde que en una audiencia donde su mala conducta es un punto en debate, su patron tiene que comprobar:

- 1) Una violacion por el motivo de,
- 2) Una obligacion importante que le debe a su patron
- 3) Y que fue hecha proporcionalmente o demuestra bastante falta de interes por las obligaciones de su trabajo.

Usted puede ganar si comprueba que:

- 1) No hubo ningun tipo de violacion, o
- 2) Si hubo alguna violacion, que no fue intencional, o
- 3) Que sucedio solamente una vez y fue incidente menor.



Unemployment Benefits: Overpayment

EMPLOYMENT LAW OFFICE of the Legal Aid Foundation of Los Angeles
and the LABOR DEFENSE NETWORK — Telephone: (213) 389-3581

An overpayment occurs when you receive unemployment insurance benefits that you are not entitled to. Sometimes an overpayment is the result of a mistake by EDD. For example, EDD may make a mistake in calculating the amount of your check, or it may send you checks for longer than you are supposed to get them.

An overpayment may also be caused by your answering incorrectly a question on the unemployment application form or failing to report a change in your circumstances, such as a job offer you have refused or an illness which prevents you from looking for work.

Finally, an overpayment can occur when, after EDD decides that you are eligible for unemployment benefits, your employer appeals and you ask EDD to continue sending you your checks while you are waiting for a hearing to be scheduled; if the Administrative Law Judge at the hearing decides that you are not really eligible for unemployment benefits, all of the unemployment checks you received will be an overpayment.

WHAT IS DONE ABOUT AN OVERPAYMENT?

When EDD thinks you have been overpaid, it will send you a NOTICE OF OVERPAYMENT (See attachment) stating the amount and the reason. There are two things you can do when you get a notice like this. If you disagree with the amount or the reason, you can file an appeal. If you don't disagree with EDD but you can't pay the money back or you don't think it would be fair for you to pay the money back, you can ask for a waiver.

APPEALS

If you file an appeal, a hearing will be scheduled and an Administrative Law Judge will decide if you have to pay back the money EDD says you owe. The appeal will follow the

same procedures and involve the same issues as any other appeal to establish your eligibility for benefits.

If the overpayment is based upon an earlier decision that you failed to appeal or that you lost an appeal, you cannot re-argue why you were entitled to the benefits you received. However, if you are told for the first time why EDD thinks you should not have received unemployment checks, you must argue that you were entitled to them.

WAIVERS

Overpayments can be waived. This means that you will be excused from repaying the amount overpaid if you can show:

- (1) The overpayment was not due to fraud, misrepresentation, or willful nondisclosure by you; and,
- (2) The overpayment was received without any fault on your part; and
- (3) Its recovery would be against equity and good conscience. (It would be unfair.)

Put more simply, this means that you do not have to repay an overpayment if you did not cause it, and if repaying it would either be unfair or cause you hardship.

Usually the important question is whether the overpayment was your fault. Even if EDD made the mistake which caused you to receive an overpayment, you must be prepared to show that you believed you were entitled to benefit and that your belief was reasonable. For example, if you told EDD you had gone back to work and you continued to receive unemployment checks, you must be able to give a reasonable explanation why you thought it was okay to keep the checks. If the overpayment occurred because you failed to report an important fact, or you reported the fact incorrectly, you must be able to give a reasonable explanation for your mistake.

Because you are expected to read the

forms mailed to you and the handbook given to you when you apply for unemployment insurance benefits, it is difficult to prove that you did not understand what you were supposed to report. On the other hand, if you met all your reporting requirements and the overpayments occurred because EDD made a mistake or because your employer won its appeal, you will usually not be at fault for receiving the extra money.

In addition to showing that you were not at fault in causing or receiving the overpayment, you will have to show that repaying it would be unfair or an economic hardship for you. Repayment would be unfair if you can show that you took some action you would not have otherwise taken because you thought you were entitled to the checks you received. For example, if you signed an apartment lease for more rent than you could otherwise afford to pay because you thought you were entitled to keep the checks you received, it would be unfair for EDD to make you pay back the money it sent you.

You can show that repayment would be an economic hardship if you can show that you need all or most of your present income to meet your living expenses. Even if you have savings or other resources larger than the amount of the overpayment, you can still show it would be a hardship to repay it if you need the saving to live on or to meet expected expenses, such as for a new child or for anticipated medical bills. To help show this, you should bring to your overpayment hearing a monthly budget showing your income and expenses.

If you can show that you were without fault in causing or receiving the overpayment and that its recovery would be unfair or cause you economic hardship, it will be waived. Once an overpayment has been waived, it can never be collected by EDD.

COLLECTION OF OVERPAYMENTS

If your request for a waiver is denied however, EDD will ask you to repay it. Often they will ask you to fill out a Financial Statement and to make monthly payments which they consider to be within your means. They may also ask you to sign a written agreement to repay the overpayment, based upon the monthly payments.

You do not have to sign this agreement, and you should not. If you want to repay EDD, you can do it without signing an agreement. The effect of signing the agreement may be to extend the time in which EDD can attempt to collect the overpayment. (This is explained below.)

There are several other ways in which EDD can attempt to collect the overpayment. The most common is by taking it out of future checks you get. EDD can take the overpayment from both unemployment and disability checks you get for a period of time that can last up to 4 years.

EDD can also bring a lawsuit against you for the overpayment within one year from the date of the NOTICE OF OVERPAYMENT or the date of any final decision by an Administrative Law Judge or the Appeals Board concerning the overpayment. Unless you have signed an agreement with EDD, the overpayment cannot be collected after these time periods have ended. An agreement, however, could entitle EDD to bring a lawsuit against you up to four years after any breach of the agreement. That is why you should not sign a repayment agreement.

SUMMARY

When you receive a NOTICE OF OVERPAYMENT, you should first decide whether an overpayment really occurred and whether you can still challenge the facts upon which the overpayment is based.

If the NOTICE OF OVERPAYMENT is correct, you should request a waiver. The overpayment will be waived if you can show:

- (a) You were without fault in causing or receiving the overpayment; and,
- (b) Recovery of the overpayment would be unfair or cause economic hardship.

If you are held responsible for an overpayment, EDD must bring a lawsuit against you within 1 year or else recover overpayment from your future unemployment or disability checks within a period of time that can last up to 4 years. You may wish to repay the overpayment voluntarily, but you should not sign any written agreement to repay which extends these time periods.



Beneficios de Seguro de Desempleo Sobrepagos

UIB: Overpayment

EMPLOYMENT LAW OFFICE of the Legal Aid Foundation of Los Angeles
and the LABOR DEFENSE NETWORK — Telephone: (213) 389-3581

Unemployment Insurance
Code §1375

QUE ES UN SOBREPAGO?

Un sobre pago puede ocurrir cuando usted recibe beneficios de seguro de desempleo que a usted no le corresponde recibir. A veces un sobre pago es el resultado de un error por EDD. Por ejemplo, EDD puede hacer un error cuando calculan la cantidad de su cheque, o pueden mandar sus cheques por mas tiempo de lo que usted deberia de recibir. Un sobre pago tambien puede ser causado cuando usted contesta una pregunta incorrectamente en el formulario de la aplicacion de desempleo o cuando usted deja de reportar un cambio en sus condiciones, como rehusar una oferta de trabajo o una enfermedad que le impida buscar trabajo. Finalmente, un sobre pago puede ocurrir cuando, despues que EDD decide que usted es elegible para los beneficios de desempleo, su empleador apela y usted le pide a EDD que continuen enviandole sus cheques mientras que usted esta esperando la cita para la audiencia; si el juez de Leyes Administrativas en la audiencia decide que usted realmente no es elegible para los beneficios de desempleo, todos los cheques de desempleo que usted ha recibido seran un sobre pago.

QUE SE HACE CUANDO HAY UN SOBREPAGO?

Cuando EDD piensa que a usted le hicieron un sobre pago, ellos le enviaran un Aviso de Sobre pago declarando la cantidad y la razon. Hay dos cosas que usted puede hacer cuando recibe un aviso como este. Si usted no esta de acuerdo con la cantidad o la razon, usted puede pedir una apelacion. Si usted no esta en desacuerdo con EDD pero usted no puede pagar el dinero o usted no piensa que es justo que tenga que pagar el dinero, usted puede pedir una renuncia. (Waiver)

Apelaciones

Si usted archiva una apelacion, una audiencia sera fijada y un juez de leyes

administrativas decidira si usted tiene que regresar el dinero que EDD dice que usted debe. La apelacion seguira el mismo procedimiento e involvera los mismos asuntos como cualquier otra apelacion para establecer su eligibilidad para recibir beneficios.

Si el sobre pago es basado sobre una decision anterior donde usted fallo de apelar o donde usted perdio la apelacion, usted no puede argumentar de nuevo porque cree que tenia derecho a los beneficios que usted recibio. Sin embargo, si a usted le han dicho por primera vez porque EDD cree que usted no deberia de haber recibido los cheques de desempleo, usted tiene que argumentar que usted si tenia derecho a recibirlos.

RENUNCIAS

Los sobre pagos pueden ser renunciados. Esto quiere decir que usted sera disculpado de tener que regresar la cantidad sobre pagada si usted puede demostrar que:

- (1) El sobre pago no fue por razon de fraude, malrepresentacion, o falta de revelacion intencional por parte de usted; y
- (2) El sobre pago se recibio sin ninguna culpa de su parte; y
- (3) La recuperacion sera contra equidad y buena conciencia (injusto). Esto simplemente quiere decir que usted no tiene que regresar un sobre pago si usted no lo causo, y si regresarlo sea injusto o le causara privaciones.

Por lo general, la pregunta importante es si el sobre pago fue por culpa de usted. Esto es muy importante. Aunque EDD haya hecho el error que causo que usted recibiera un sobre pago, usted debe de estar preparado para demostrar que usted creyo que tenia derecho a estos beneficios y que usted puede dar una explicacion razonable. Por ejemplo, si usted le dijo a EDD que usted regreso a trabajar y usted continuo recibiendo cheques de desempleo,

usted tiene el deber de dar una explicacion razonable porque usted penso que era correcto quedarse con los cheques. Si el sobrepago ocurrio porque usted no reporto un hecho importante, o usted reporto el hecho incorrectamente, usted debe de dar una explicacion razonable por su error. Porque es de esperar que usted lea las formas que le mandan por correo y el librito que le dieron cuando usted hizo la solicitud para los beneficios del seguro de desempleo, es dificil comprobar que usted no comprendio lo que usted deberia de haber reportado. En cambio, si usted lleno todos los papeles requeridos y el sobrepago ocurrio porque EDD cometio un error o porque su empleador gano su apelacion, usted generalmente no va a tener la culpa por haber recibido el dinero adicional.

Ademas de haber demostrado que usted no tuvo la culpa de haber causado o recibido el sobrepago, usted tendra que demostrar que regresar el sobrepago es injusto o una privacion economica para usted. El regreso del sobrepago es injusto si usted puede comprobar que usted tomo alguna accion que usted de otro modo no hubiera tomado porque usted creyo que le correspondian los cheques que recibio. Por ejemplo, si usted firmo un contrato de arrendamiento por mas renta de lo que usted de otro modo no hubiera podido pagar porque usted creia que tenia derecho a quedarse con los cheques que usted recibio, seria injusto que EDD le hiciera a usted pagar el dinero que ellos le mandaron.

Usted puede probar que la devolucion del pago le causara privaciones economicas, si puede comprobar que necesita todo o la mayor parte de sus presentes entradas para complir con sus gastos de mantenimiento. Aunque usted tenga ahorros u otros recursos mayores que la cantidad del sobrepago, usted todavia puede probar que es injusto tener que devolverlo si usted necesita los ahorros para poder vivir o cubrir los gastos que usted tiene, tales como un bebe recien nacido o por cuentas medicas que espera recibir. Para ayudar a demostrar esto, usted debe traer a su audiencia de sobrepago, un presupuesto mensual indicando sus entradas y sus gastos.

Si usted puede demostrar que usted no tuvo la culpa de causar o recibir el sobrepago y que la devolucion es injusta o le causara

problemas economicos, el sobrepago sera suspendido. Una vez que el sobrepago haya sido suspendido, el dinero nunca podra ser colectado por EDD.

COBRO DE SOBREPAGOS

Si, sin embargo, su solicitud de renuncia es negada, EDD le va a pedir que devuelva el sobrepago. Muchas veces ellos piden que usted llene una declaracion financiera y de que haga abonos mensuales que ellos consideran que usted pueda pagar. Ellos tambien pueden pedir que usted firme un arreglo por escrito para pagar el sobrepago, en abonos mensuales.

Usted no tiene que firmar este arreglo, y no deberia firmar. Si usted quiere pagarle a EDD, usted lo puede hacer sin firmar. El efecto de firmar un arreglo puede ser de extender el tiempo el cual EDD puede tratar de colectar el sobrepago. (Abajo se explica esto.)

Hay varias otras maneras de que EDD puede tratar de colectar el sobrepago. Las mas frecuentes son: embargando el dinero de los cheques que usted reciba en el futuro. EDD puede embargar el sobrepago de los dos cheques, desempleo e incapacidad que usted espera recibir por un periodo de tiempo hasta de cuatro anos. EDD tambien puede demandarlo por el sobrepago durante un ano desde la fecha de el aviso de sobrepago o la fecha de cualquier decision final dada por un juez administrativo o la Junta de Apelaciones, a menos que usted haya firmado un arreglo con EDD, el sobrepago no puede ser colectado despues de que estos periodos de tiempo hayan terminado. Un acuerdo, sin embargo, puede darle autoridad a EDD de demandarlo a usted hasta cuatro anos despues si se presenta alguna violacion en el contrato. Por eso es que usted no debe firmar un arreglo de devolucion.

RESUMEN

Cuando usted recibe el aviso del sobrepago, usted debe de decidir primero si realmente recibio un sobrepago y si todavia puede objetar la forma en que se baso el sobrepago.

Si el aviso del sobrepago es correcto, usted deberia pedir un renuncio. El sobrepago se renuncia si usted puede demostrar que:

- (1) Usted no tiene la culpa de haber causado o recibido el sobrepago; y
- (2) El cobro del sobrepago es injusto o le causara privaciones economicas.

Si a usted lo hallan responsable por el sobrepago, EDD debe entablar la demanda contra usted en el termino de un año y ademas recuperar el sobrepago de sus futuros cheques de desempelo o incapacidad dentro de un periodo de tiempo que puede durar hasta cuatro años. Usted puede pagar el sobrepago voluntariamente, pero no debe firmar ningun arreglo por escrito que puede prolongar las condiciones del tiempo.



Sample Wording for Filing a Charge of Sex Discrimination

EMPLOYMENT LAW OFFICE of the Legal Aid Foundation of Los Angeles
and the LABOR DEFENSE NETWORK — Telephone: (213) 389-3581

SAMPLE WORDING YOU MAY USE

WHEN FILING A CHARGE OF SEX DISCRIMINATION

Below are some samples of wording you may be able to use when filing your charge of sex discrimination through the administrative remedies available to you. (These may include state and/or federal government agencies that enforce discrimination laws; your workplace grievance procedure; etc.)

The wording is intended to assist you in making your charge clear, concise and to the point. Remember the issue is sex discrimination (that is, differential treatment based on your sex). It is your responsibility to adapt the wording to your individual situation. Refer to your documentation for dates and examples of specific major incidents.

SEXUAL HARASSMENT CHARGE:

I believe I am being (have been) discriminated against on the basis of sex. Since (give date(s) behavior started) I have received unwanted, unwelcomed (sexual attention, demands, advances, derogatory comments, sexually obscene jokes, comments, literature, physical touching, grabbing, etc.)

I have been subjected to this unwanted, unwelcomed behavior (on a daily, weekly, constant, occasional, etc.) basis.

(GIVE AT LEAST TWO (2) MAJOR INCIDENTS WITH DATES... "On or about...")

COMPARABLE WORTH CHARGE:

I believe I am being (have been) discriminated against on the basis of sex. (I have not received a promotion, have been denied a promotion, not received a raise, have not been considered for a raise, have not been considered for a promotion, am not receiving comparable wage to male employees, denied benefits, not receiving comparable benefits to male employees, etc.) I believe these acts are unwarranted and based solely on my sex.

(GIVE MAJOR EXAMPLES OF INCIDENTS WITH DATES)

PREGNANCY CHARGE:

I believe I am being (have been) discriminated against on the basis of my sex. Since I have been pregnant, I have received unwarranted and unjustified (reprimands, comments about my ability to perform my job, etc.)

(GIVE EXAMPLES WITH DATES)

RETALIATION CHARGE:

(If retaliation has occurred before filing the sex dis-

crimination charge, include the retaliation charge in your original sex discrimination charge.)

I believe I have also been subjected to unwarranted and unjustified reprimands as a result of my (rejecting the unwanted and unwelcome sexual attention, demands, etc., my objecting to what I considered to be unfair evaluation of my work performance, demotion, denial of promotion, etc.)
(GIVE MAJOR INCIDENTS OF RETALIATION WITH DATES)

SECOND CHARGE OF RETALIATION:

(To be filed if retaliatory behavior occurs after you have filed your first charge.)

Starting on or about (date you filed your first charge), the date I filed my charge of sex discrimination (give charge number) I have been subjected to constant and increasing retaliation.

(GIVE DATES AND MAJOR INCIDENTS)

Note: If any physical touching occurred as a form of discrimination, be sure to include those incidents in your examples. Remember, you can be in control of your charge if you know your rights and responsibilities.

IT IS YOUR RIGHT TO GET YOUR CHARGE TAKEN. INSIST UPON IT. ASK TO SPEAK TO A SUPERVISOR.

U.S. EQUAL EMPLOYMENT OPPORTUNITIES COMMISSION (EEOC)
Los Angeles District Office
3255 Wilshire Boulevard, 9th floor
Los Angeles, CA 90010
Telephone: (213) 894-3400

CALIFORNIA DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING
Division of Fair Employment Practices Commission
322 West First Street
Los Angeles, CA 90012
Telephone: (213) 620-2610

IF YOU HAVE ANY QUESTIONS OR NEED MORE ADVICE, CONTACT THE LABOR DEFENSE NETWORK AT:

HOLLYWOOD-SUNSET COMMUNITY CLINIC
3324 Sunset Boulevard (at Micheltorena
between Hoover and Silverlake Boulevard)
Thursdays: 7:00 - 8:30 p.m.
or call 660-2400, Mondays - Fridays after
12:00 noon for an appointment



Tienes Derecho a un Lugar de Trabajo que es Seguro

EMPLOYMENT LAW OFFICE of the Legal Aid Foundation of Los Angeles
and the LABOR DEFENSE NETWORK — Telephone: (213) 389-3581

¿TENGO DERECHO A UN SITIO DE TRABAJO SEGURO?

Si. Su empleador tiene que asegurar que el sitio donde usted trabaja este razonablemente seguro de riesgos conocidos y que no le vayan a causar dano o muerte. Hay multas si su empleador deja de hacer esto. Sin embargo, aunque no sea ciudadano usted està protejido.

¿TENGO EL DERECHO DE SABER CON QUE QUIMICAS ESTOY TRABAJANDO?

Algunas de las substancias con las que trabaja son extremadamente peligrosas para su salud. Muchas de ellas pueden causar cancer, otras pueden causar problemas de la piel, problemas de los ojos, y otras pueden causar enfermedades. Si usted trabaja en la industria de manufactura, le deben de advertir de la quimicas con las que trabaja. Su empleador le debe dar informacion proveida por el compania que produce los quimicos, polvos o metales con los cuales usted trabaja. Las etiquetas en los barriles de los quimicos con los que usted trabaja tienen que quedarse en los barriles y su empleador no debe quitarlos. Usted y su empleador deben asegurarse que las precauciones en la etiqueta sean obedecidas.

¿ACERCA DE APARATOS DE SEGURIDAD?

Su empleador debe asegurarse de que usted tenga la apropiada proteccion para el tipo de trabajo que usted hace. Por ejemplo, si usted necesita un respirador, su empleador le debe de proveer uno que sea propio para el trabajo que usted hace. Si usted trabaja donde hay gente trabajando sobre usted, se le debe proveer un casko duro. Si trabaja donde vuelan pedasos de

metal o madera, se le debe proveer lentes de seguridad.

¿PUEDO NEGARME A TRABAJAR CON UNA MAQUINA QUE NO ESTA SEGURA?

Si, si la maquina es tan peligrosa que le pueda causar muerte o seriamente danarlo. Si su maquina no esta en condiciones para causarle un gran dano, usted puede reportar los peligros, pero no puede negarse a trabajar con la maquina.

¿PUEDO NEGARME A TRABAJAR CON QUIMICAS QUE ME HACEN SENTIRME ENFERMO?

Si. Puede negarse a trabajar con productos quimicos que le puedan causar enfermarse seriamente o inmediato peligro o muerte. Primero digale al supervisor que usted no quiere dejar su trabajo y esta dispuesto a trabajar en una area mas segura a su sitio de trabajo. Si su empleador lo fuerza a trabajar en alguna parte que sea peligrosa y amenace su vida, busque un testigo y despues de que se niegue, inmediatamente quejese con OSHA. Si usted esta embarasada, usted debe tratar de negociar un arreglo con su empleador para que la manden a otro sitio donde no este exponida a quimicos durante su embarazo. Unos quimicos pueden danar a su bebe.

¿SI ESTOY ENFERMO, COMO ME DOY CUENTA SI ALGUNA COSA EN EL TRABAJO LO ESTA CAUSANDO?

No es facil para saber eso. Si usted cree que su trabajo le esta causando que se enferme, usted debe llamar a OSHA. Ellos mandaran a una persona a inspeccionar su trabajo para ver si esta insaludable. Usted debe estar preparado para decirle al inspector de OSHA de lo que cree que esta causando el problema y porque.

¿COMO ME QUEJO SI MI TRABAJO ESTA PELIGROSO Y NO ESTA SANO?

Si usted piensa que su empleador esta violando la ley por no asegurarse que su sitio de trabajo este fuera de peligro y sano, usted puede archivar una queja con OSHA. Va a tener que hacer una queja escrita. Si usted pide que su nombre sea confidencial, lo sera. Despues de que archive la queja, OSHA mandara inspectores para ver si su empleador que arregle el problema y daran una mulata, si esta violando la ley. OSHA hara que su empleador poste una noticia que diga que tiene que arreglar el problema. Si usted piensa que el problema no esta por arreglarse, debe llamar a OSHA otra vez y quejarse con el director. Si usted o su empleador piensan que OSHA hizo un error, ustedes pueden archivar una apelacion. Debe usted hacer esto con la ayuda de un representante legal con experencia. Si tiene sindicato, usted debe archivar un agravio quejandose de la condicion peligrosa. Si OSHA no va a inspectar en unos dias, debe llamar otra ves para saber cuando van a ir a inspectar.

¿PUEDO ESTAR PRESENTE CUANDO OSHA HAGA SU INSPECCION?

Si. Si usted quiere, usted puede participar en hablar con en inspector de OSHA y en enseñarle los peligros de la area en que usted trabaja. Usted tambien puede hablar con el en privado. Usted puede hacer esto solo si no pidio que su nombre se mantenga secreto.

¿ME PUEDEN DESPEDIR POR HABER REPORTADO EL PROBLEMA O POR HABER AYUDADO EN LA INSPECCION?

No. Es muy importante que trabajadores reporten problemas en sus sitios de trabajo. Nadien mas tiene mejor idea de el tipo de problemas que existen. Por esta razon, la ley lo proteje para que no lo despidan o le rebajen de su posicion por haberse quejado con OSHA aunque usted no sea ciudadano. Unos empleadores pueden desobedecer la ley y vengarse con los empleadores por haberse quejado del prob-

lema. Si su empleador lo despide o lo rebaja de puesto, usted puede archivar una queja con OSHA dentro de 30 dias desde la fecha en que fue despedido o rebajado de posicion.

Aqui estan algunos numeros importantes en Los Angeles:

CalOSHA:

(213) 736-3024

Comisionado Laboral:

(213) 620-5130

Asociacion Pulmonaria:

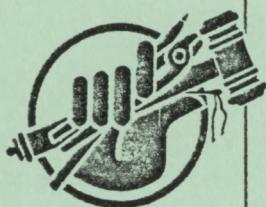
(213) 935-5864

LACOSH:

(213) 749-6161

Oficina de Leyes de Empleo de La Fundacion de Ayuda Legal De Los Angeles/ Red de Defensa Laboral (para ayuda legal)

(213) 389-3581



HOW DO I CHARGE MY EMPLOYER WITH DISCRIMINATION UNDER THE NEW IMMIGRATION LAW?

EMPLOYMENT LAW OFFICE of the Legal Aid Foundation of Los Angeles
and the LABOR DEFENSE NETWORK — Telephone: (213) 389-3581

The Immigration Reform and Control Act of 1986 made two important changes in our legal system. The law allowed people who had been in the United States since before January 1, 1982, to become legal residents. In addition, it made it illegal for employers to hire workers who do not have permission from the Immigration and Naturalization Service (INS) to work in the United States.

Many people believe the work authorization requirements of the new law have made it more likely that immigrants, or people who look like immigrants, will be treated differently than other workers. This leaflet discusses which types of discrimination or different treatment are illegal. It will also tell you what you can do if you believe that you have been treated illegally.

CAN AN EMPLOYER TREAT ME DIFFERENTLY THAN OTHER WORKERS, JUST BECAUSE I AM AN IMMIGRANT?

To some extent, it is legal for your employer to treat you differently.

For example, if you do not have work authorization from INS, an employer can refuse to hire you even if you are otherwise qualified for the job. And, even if you do have work authorization, if you are competing with an United States citizen for a job, it is not illegal for an employer to give the job to the citizen rather than to you, if you are both equally well qualified.

In any other circumstance however, the law requires that you be treated the same as any other worker. The new law specifically says that it is illegal to treat a worker differently or to discriminate against a worker because of his or her citizenship status or national origin. That means that an employer cannot fire you, lay you off, demote you or refuse to hire you because of your citizenship status or because of your national origin.

Discrimination based upon citizenship status occurs when an employer treats you differently because you are an United States citizen or because you are an immigrant who intends to become an United States citizen.

National origin discrimination occurs when you are treated differently because of the country you or your ancestors came from.

WHAT CAN I DO IF AN EMPLOYER DISCRIMINATES AGAINST ME?

The new immigration law created a special government office to handle discrimination complaints. It is called the Office of the Special Counsel for Immigration-Related Unfair Employment Practices. If you believe you were discriminated against because of your citizenship status, you can file a complaint form (charge) at the new Special Counsel's Office.

You can also file a charge at the Special Counsel's Office if you believe you were discriminated against because of your national origin. However, the Special Counsel will probably refer this charge to another government agency, the Equal Employment Opportunity Commission (EEOC). The EEOC handles complaints of discrimination based upon a worker's race, nationality, sex, religion, age, etc. The EEOC's procedures are not discussed in this leaflet.

You may be able to file a complaint under other state and federal laws as well. These laws are not discussed in this leaflet.

IS THERE ANYTHING I NEED TO DO BEFORE FILING A CHARGE?

Before you file your charge, you should gather as much information as possible.

Documents are very important in legal cases. If you have any documents showing that you were discriminated against because of your citizenship status, you should keep them in a safe place. These documents might include a lay-off notice or rejection letter saying that your employer only hires United States citizens.

You should also make a list of the names, addresses and phone numbers of any witnesses who heard or saw your employer discriminate against you. An investigator from the Special Counsel's Office will talk to these people.

Finally, you should make a diary of the important events that occurred in your case. The diary should include the date of each incident and a description of what each person said or did.

If you cannot write this information down yourself, ask a friend or family member to help you. Your chances of winning your case are better if you do a careful job of collecting your information.

HOW DO I FILE A CHARGE AT THE SPECIAL COUNSEL'S OFFICE?

There are several steps to filing a charge at the Special Counsel's Office.

1. Before you can file your charge, you must prepare a Declaration of Intending Citizen. This is a form issued by the INS. When you complete it and file it, you are formally stating that you eventually intend to become an United States citizen.

Because the new law only protects intending citizens, it is very important that you complete this declaration and file it as soon as possible. For your convenience, a copy of the Declaration of Intending Citizen is attached to this leaflet. If you intend to become an United States citizen and you would like to be legally protected from discrimination, you should complete this form now and mail it to the INS. Send your declaration by certified mail, and request a return receipt. When the receipt is delivered to you, keep it in a safe place.

It is best to file this declaration now, before you are discriminated against. If you cannot do that, the Special Counsel's Office may still accept your case if you prepare and file a Declaration of Intending Citizen before you file your charge at the Special Counsel's Office.

2. A copy of the Special Counsel's charge form is attached to this leaflet. You should complete this form carefully. You will be asked to swear that the information on the form is accurate.

If for some reason there is no charge form attached to this leaflet, you can still file a charge by writing a letter to the Special Counsel, explaining who you are, what your immigration status is, and why you believe you were the victim of discrimination. Include as many specific facts as possible in your letter. Be sure to include your address, so the Special Counsel can respond to your charge.

The charge form or your letter should be mailed to this address:

Office of Special Counsel for
Immigration-Related Unfair
Employment Practices
P. O. Box 65490
Washington, D. C. 20035-5490

If you have additional questions about how to complete or file your charge, you can call the Special Counsel's Office at 1-800-255-7688. People who speak Spanish should be available to assist you.

ARE THERE TIME LIMITS FOR FILING A CHARGE?

Yes. You must file a charge with the Special Counsel's Office within 180 days after you were discriminated against.

WHAT WILL THE SPECIAL COUNSEL'S OFFICE DO WITH MY CHARGE?

The Special Counsel's Office will investigate your charge. If it agrees that you were discriminated against, it will file a formal complaint with an administrative law judge on your behalf. If the Special Counsel's Office decides not to file a formal complaint in your case, you can file your own formal complaint with an administrative law judge. The judge will hold a hearing to determine whether you were discriminated against.

WHAT SHOULD I DO DURING THE SPECIAL COUNSEL'S INVESTIGATION?

The best way to get the Special Counsel to believe in your case is to work with the investigator. You should give the investigator all of the documents you collected. You should give the investigator the names, addresses and

phone numbers of your witnesses. If necessary, take the witnesses to see the investigator. The more you do for your case, the better your chances.

You also need to think about settling your case. The Special Counsel's office will tell your employer about your charge. The employer will have a chance to tell the investigator its side of the story. During the investigation, either the employer or the investigator may ask you to settle the case. This can be a difficult decision to make. You have the right to back wages and reinstatement if you win your case. In order to settle, however, you might be required to give up some of your rights. For example, your employer might offer you part of your wages and no reinstatement. Or, your employer might offer to take you back to work but not to pay any money to you. You will have to decide what you think is best. You should have some idea of what you want out of your case from the very beginning. If you know what you want, then it will be easier for you if your employer offers to settle.

HOW QUICKLY WILL THE SPECIAL COUNSEL'S OFFICE INVESTIGATE MY CHARGE?

The Special Counsel must decide whether to file a complaint on your behalf within 120 days after it receives your charge.

If the Special Counsel asks you for additional information while it is investigating your charge, you have 45 days to send the information.

If the Special Counsel decides not to file a complaint on your behalf, or if 120 days go by and you do not hear from the Special Counsel, you have an additional 90 days to file your own complaint with an administrative law judge.

These time limits are important. Missing just one of them may cause you to lose your case even if it is very strong.

HOW DO I FILE MY OWN COMPLAINT IF THE SPECIAL COUNSEL WILL NOT HELP ME?

If you decide to file your own complaint, you have to file the original and two copies with:

Chief Administrative Hearing Officer
5113 Leesburg Pike
Skyline Building 4
Suite 310
Falls Church, VA 22041

Currently, there is no standard form available for this complaint. You should consult a lawyer before filing this complaint.

WHAT SHOULD I ASK FOR IN MY COMPLAINT?

You can ask the administrative law judge to order your employer to pay you the wages you would have earned if you had not been discriminated against. You also can ask for your job back. You cannot ask for punitive damages or for money to compensate you for the aggravation your employer caused you. Your employer can reduce the amount it owes you by the money you earned or should have earned after the discrimination occurred.

WHAT WILL HAPPEN AT MY HEARING?

Eventually, you will be able to present your case to a judge. Even though the formal rules of evidence do not apply to these proceedings, the trial itself is formal. The only evidence that the judge will accept is exhibits or testimony under oath. You will have to bring in your witnesses and ask them questions. Your employer will be able to question your witnesses as well. Remember, it is your job to prove that your employer intentionally discriminated against you. Your employer does not have to prove anything.

Once you finish presenting your case, your employer may call witnesses. If it does, you have the right to question your employer's witnesses just as your employer questioned your witnesses.

After the hearing is over, the judge will mail you a copy of his or her decision.

WHAT HAPPENS AFTER I FILE A COMPLAINT?

There will be a period of time between the filing of your complaint and the trial. During this time you can ask your employer and your employer can ask you about the facts of the case. This is called pretrial discovery. It may include the taking of depositions, which provide an opportunity to ask questions of the other side's witness while that witness is under an oath to tell the truth. This process can become complicated.

**NOTE: TO HELP US DOCUMENT ALL
CASES OF DISCRIMINATION,
PLEASE COMPLETE THE ATTACHED
QUESTIONNAIRE.**

UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE

ORIGINAL
(INS COPY)

DECLARATION OF INTENDING CITIZEN

(This declaration is not evidence of lawful
admission for permanent residence)

(1) My full, true, and correct name is _____
(Full, true and correct name, without abbreviation.)

(2) Other name(s) used: _____

(3) My present place of residence is _____
(Number and street)

_____ (City or Town) _____ (County) _____ (State) _____ (ZIP Code)

(4) Alien Registration Number(s): A - _____

(5) I am an alien residing in the United States who:

- (A) has been lawfully admitted for permanent residence; *or*
- (B) has been granted the status of an alien lawfully admitted for temporary residence under section 245A (a) (1) of the Immigration and Nationality Act; *or*
- (C) has been admitted as a refugee under section 207 of the Immigration and Nationality Act; *or*
- (D) has been granted asylum under section 208 of the Immigration and Nationality Act.

(6) I hereby declare my intention in good faith to become a citizen of the United States.

I do swear (affirm) that the statements I have made and the intention I have expressed in this Declaration of Intending Citizen subscribed by me are true to the best of my knowledge and belief.

_____ (Signature of Declarant)

PENALTIES FOR SUBMITTING FALSE INFORMATION

Federal law provides for imprisonment and/or fine for any false statements made in connection with this Declaration.

Received and filed by

_____ (INS Officer)

at _____ on this _____

day of _____, 19 _____

DECLARATION OF INTENDING CITIZEN

READ THE FOLLOWING INFORMATION CAREFULLY

General Information

The filing of this Declaration of Intending Citizen with the Immigration and Naturalization Service is required in order for an alien, who falls within one of the four groups listed below, to assert a claim of discrimination on the basis of citizenship status under section 274B of the Immigration and Nationality Act. Only the following groups of alien may assert such discrimination claims:

- (a) an alien who has been lawfully admitted for permanent residence; *or*
- (b) an alien who has been granted the status of an alien lawfully admitted for temporary residence under section 245A (a) (1) of the Immigration and Nationality Act; *or*
- (c) an alien who has been admitted as a refugee under section 207 of the Immigration and Nationality Act; *or*
- (d) an alien who has been granted asylum under section 208 of the Immigration and Nationality Act.

An alien who falls within *one* of the four groups listed in the column to the left may, but is not required to, complete this Declaration of Intending Citizen. The filing of this form with the Immigration and Naturalization Service, however, is one of the prerequisites established by section 274B of the Immigration and Nationality Act (Act) for an alien in one of the groups listed to the left to assert a claim of discrimination on the basis of citizenship status under that section. Section 274B of the Act further provides that, in order for an alien who is eligible for naturalization to be able to file a citizenship discrimination claim under this Act, he or she must apply for naturalization within six months of the date the alien first becomes eligible to apply. After applying for naturalization on a timely basis, the alien must also have been naturalized within two years after the date of application, in order to be able to file a citizenship discrimination claim under this Act, unless the alien can establish that he or she is actively pursuing naturalization. The Act also states that the time consumed in the Service's processing the application for naturalization shall not be counted toward the two-year period.

This Declaration of Intending Citizen is not required as a basis for filing a petition for naturalization. Nor shall this Declaration be regarded as conferring or having conferred upon the person who filed it United States citizenship or nationality or the right to United States citizenship or nationality; nor shall this Declaration be regarded as evidence of such person's lawful admission for permanent residence.

Instructions for the Alien

Information provided by the alien on the Declaration of Intending Citizen in response to paragraphs (1), (2), (3) and (4) should be typed or printed legibly in ink. Upon completing the form, the alien should send the original and the attached duplicate copy to the office of the Immigration and Naturalization Service having jurisdiction over the alien's place of residence. After an Immigration and Naturalization Service officer reviews and files this Declaration, the officer will send the duplicate copy back to the alien. The alien should retain the duplicate.

**Mail To: U.S. Department of Justice
Office of Special Counsel
for Immigration-Related
Unfair Employment Practices
P.O. Box 65490
Washington, D.C. 20035-5490**

Instructions

This charge form is to be used only to file a charge alleging discrimination based upon national origin and/or citizenship status in violation of section 102 of the Immigration Reform and Control Act of 1986, 8 U.S.C. § 1324b. This charge form must be filed with the Office of Special Counsel for Immigration Related Unfair Employment Practices.

On the form, "Injured Party" means a person who claims to have been adversely affected directly by an unfair immigration-related employment practice or, in the case of a charge filed by an officer of the Immigration and Naturalization Service or by a Charging Party other than the Injured Party, is alleged to be so affected.

On the form, "Charging Party" means: (1) an individual who files a charge with the Special Counsel that alleges that he or she has been adversely affected directly by an unfair immigration-related employment practice; or (2) an individual or private organization who is authorized by an individual to file a charge with the Special Counsel that alleges that the individual has been adversely affected directly by an unfair immigration-related employment practice; or (3) an officer of the Immigration and Naturalization Service who files a charge with the Special Counsel that alleges that an unfair immigration-related practice has occurred.

The "Charging Party" should complete the charge form in its entirety by typing, or neatly printing, the information requested. If a question is not applicable, it should be left blank.

This charge form must be delivered or mailed to the Office of Special Counsel within 180 days of the alleged discrimination. The Office of Special Counsel's address is:

**Office of Special Counsel
for Immigration-Related
Unfair Employment Practices
P.O. Box 65490
Washington, D.C. 20035-5490**

Questions concerning this charge form can be directed to the Office of Special Counsel by mail at the above address or by telephone at (202) 653-8121 or 1-800-255-7688 (toll free).

1. Charging Party

Full Name:	Telephone:	
()		
Other Names Ever Used:		
Street Address:		
City:	State:	Zip Code:
Injured Party (if INJURED PARTY is same as CHARGING PARTY, write "same")		
Full Name:	Telephone:	
()		
Other Names Ever Used:		
Street Address:		
City:	State:	Zip Code:

2. Individual, Business or Organization Which You Believe Has Discriminated:

Full Name:	Telephone (if known): ()	
Street Address:		
City:	State:	Zip Code:

3. Individual, Business or Organization Has (check one):

<input type="checkbox"/> Less than 15 employees, but more than 3 employees.
<input type="checkbox"/> 15 or more employees.
<input type="checkbox"/> Unable to estimate number of employees.

4. Injured Party Was Discriminated Against Because of (check one or both):

<input type="checkbox"/> National Origin
<input type="checkbox"/> Citizenship

5. Injured Party Is:

<input type="checkbox"/> Citizen or National of the United States (if this box is marked continue on to # 6)			
<input type="checkbox"/> Alien Authorized To Work in the United States (if this box is marked you must complete the rest of #5)			
If INJURED PARTY is an alien authorized to work in the United States:			
Alien Registration Number(s):			
Date of Birth:	(day)	(month)	(year)
If INJURED PARTY is an alien authorized to work in the United States:			
Injured Party (check one if applicable):			
<input type="checkbox"/> Is lawfully admitted for permanent residence			
<input type="checkbox"/> Has status of alien lawfully admitted for temporary residence under 8 U.S.C. §1255a(a)(1)			
<input type="checkbox"/> Is admitted as refugee under 8 U.S.C. §1157			
<input type="checkbox"/> Has been granted asylum under 8 U.S.C. §1158			
If INJURED PARTY is an alien authorized to work in the United States:			
INJURED PARTY: <input type="checkbox"/> Has applied for naturalization Date of Application: _____ <input type="checkbox"/> Has not applied for naturalization	INJURED PARTY: <input type="checkbox"/> Has completed a declaration of intention to become a citizen. Date of Declaration: _____		

6. When did the discrimination occur: (date) _____

7. Where did the discrimination occur: (place) _____

8. Describe the discrimination: (use additional sheets if necessary)

9. Has a charge based on this set of facts been filed with the EEOC?

Yes

If yes, which office?

No

Address: _____

City: _____ State: _____

Zip Code: _____ Telephone: () _____

Contact Person: (if known) _____

Date Filed: _____

File No: (if known) _____

10. Affirmation and Signature of Charging Party

(a) If this charge is being filed by the Injured Party:

As a person alleging that I have been injured by an unfair immigration-related employment practice, I understand that the Office of the Special Counsel may find it necessary to reveal my identity and other information during the conduct of the investigation of my charge, during any hearing or other proceeding as a result of my charge, or in limited circumstances in response to inquiries under the Freedom of Information Act. I give my consent. I affirm that, to the best of my knowledge, the information provided on this form is true.

(Signature of Injured Party)

(Date)

(b) If this charge is being filed by an authorized representative of the Injured Party:

I affirm that, to the best of my knowledge, the information provided on this form is true and that I am authorized to file this charge on behalf of the Injured Party. I understand that the Office of the Special Counsel may find it necessary to reveal my identity during the conduct of the investigation of this charge, during a hearing or other proceeding as a result of this charge, or in limited circumstances in response to inquiries under the Freedom of Information Act. I give my consent.

(Signature of Authorized Representative)

(Date)

(c) If this charge is being filed by an INS officer:

I affirm that, to the best of my knowledge, the information provided on this form is true. I understand that the Office of the Special Counsel may find it necessary to reveal my identity during the conduct of the investigation of this charge, during a hearing or other proceeding as a result of this charge, or in limited circumstances in response to inquiries under the Freedom of Information Act. I give my consent.

(Signature of INS Officer)

(Date)

PRIVACY ACT STATEMENT

The authority for requesting this information from you is contained in 8 U.S.C. Section 1324b. The information that you provide will be used principally for investigating and processing your charge of prohibited discrimination; however, the information may also be used for other legitimate purposes, as detailed in this Office's notice published in the Federal Register describing the routine uses of the information obtained by the Office. Your failure to provide the information requested on this form could lead to your charge being dismissed or not being accepted. Knowingly making false statements on this form is punishable under 18 U.S.C. Section 1001.

COALITION FOR HUMANE IMMIGRATION
RIGHTS OF LOS ANGELES
ANNE KAMSVAAAG
634 South Spring Street, 11th Floor
Los Angeles, California 90014
(213) 629-2512

Attorney for Complainant

OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES DEPARTMENT OF JUSTICE

FULANO DE TAL,)
)
Complainant)
)
vs.) 8 U.S.C. § 1324b
) Proceeding
COMPANY XYZ, a corporation,)
)
Respondents.) Case No.
)

COMPLAINT REGARDING UNFAIR
IMMIGRATION-RELATED EMPLOYMENT PRACTICES

1. FULANO DE TAL is a citizen of Mexico and a lawful permanent resident alien of the United States, authorized to work in the United States. Mr. DE TAL has been a lawful permanent resident since March 15, 1985.

2. FULANO DE TAL is an intending citizen of the United States, as defined by 8 U.S.C. § 1324b(a)(3) and 52 Fed. Reg. 37,410 (1987)(to be codified at 28 C.F.R. § 44.101(c)). On November 30, 1987, Mr. DE TAL filed a Form I-772, "Declaration of Intending Citizen", with the Immigration and Naturalization

Service.

3. FULANO DE TAL filed a charge with the Office of the Special Counsel against COMPANY XYZ on September 30, 1987. The charge was filed within 180 days of the alleged discrimination.

4. Respondent COMPANY XYZ ("COMPANY") is a corporation whose principal place of business is in Los Angeles, California. Respondent COMPANY employed more than three employees on the date of the alleged discriminatory acts, and continues to do so today.

5. At all relevant times, Mr. Chris Smith worked as the Assistant District Manager in the Los Angeles, California District Office of COMPANY.

6. On or about May 12, 1987, Mr. DE TAL sought to apply for a job as a sales agent with COMPANY. Mr. DE TAL met all legitimate qualifications established by Respondent as prerequisites for the position.

7. On or about May 12, 1987, Respondent, acting by and through its agent, representative, and employee Chris Smith informed Mr. DE TAL that he could not apply for and could not be hired for the position because he was not a United States citizen.

8. Mr. DE TAL was denied employment by Respondents as a sales agent because of his citizenship status.

9. Respondent knowingly and intentionally discriminated against Mr. DE TAL by refusing to consider him for the position of sales agent or to hire him as a sales agent for COMPANY because of his citizenship status.

10. The actions described above constitute unfair immigr-

tion-related employment practices in violation of 8 U.S.C. § 1324 b(a)(1)(B).

11. Although Mr. DE TAL was denied employment, similarly situated U.S. citizen applicants with comparable qualifications were hired by Respondent.

12. Respondent's discrimination in hiring on the basis of citizenship status, as described above, was not and is not required in order to comply with any law, regulation, or executive order, nor is it required by Federal, State or local government contract, nor has the Attorney General of the United States determined that such discrimination is essential for these employers to do business with an agency or department of the Federal, State, or local government, nor is it excused or permitted on any other ground, in law or equity.

13. Respondents' actions, as described above, are and were without reasonable foundation in law and fact.

WHEREFORE, Complainant FULANO DE TAL requests that, after hearing, the Administrative Law Judge declare the Respondent's practices unlawful, and grant the following relief:

- (a) Order Respondent to cease and desist from the discriminatory practices and policies;
- (b) Order Respondent to comply with the requirements of the nondiscrimination provisions of IRCA;
- (c) Order Respondent to retain records for three years reflecting the names and addresses of individuals who apply for or who are terminated from employment;

(d) Order Respondent to notify all persons involved in personnel decisions for Respondent of the requirements of the antidiscrimination provisions of the Immigration Reform and Control Act ("IRCA") and of the disposition of this charge and complaint;

(e) Order Respondent to post notices at all of Respondent's sites informing employees and applicants of their rights under IRCA and notifying them of the disposition of this charge and complaint;

(f) Order Respondent to hire Mr. DE TAL, with full seniority and benefits as if he had been hired at the time of his initial application for employment;

(g) Award Mr. DE TAL back pay with interest;

(h) Award Mr. DE TAL a civil penalty in the amount of \$1,000;

(i) Award Mr. DE TAL reasonable attorney's fees and expenses for the cost of pursuing this action; and

(j) Award Mr. DE TAL and others subjected to similar practices by the Respondents such other relief as may be just and proper to remedy discrimination and guard against its recurrence.

DATED: March 25, 1988

Respectfully submitted,

Attorney for Complainant

COALITION FOR HUMANE IMMIGRATION
RIGHTS OF LOS ANGELES

ANNE KAMSVAAAG